(16,079.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 78.

J. B. CESSNA, KATE CESSNA, HIS WIFE; JOHN R. KEEDLE, ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 *Transcript of the John Gid or John Heath Case.*

J. B. CESSNA *et al.*
vs.
THE UNITED STATES OF AMERICA.

Tried May term, A. D. 1895.

Counsel:

For plaintiffs: J. B. Cessna (*per se*) and T. B. Catron, for the petitioners.

For defendant: Matt. G. Reynolds, Esq., Summers Burkhart, Esq., for the United States; F. Springer, Esq., H. L. Waldo, Esq., S. B. Newcomb, Esq., E. A. Fiske, Esq., J. W. Vroom, Esq., for certain respondants.

2 UNITED STATES OF AMERICA, } *ss:*
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on January 9th, A. D. 1893, J. B. Cesna *et al.*, by their attorney, J. B. Cesna, Esq., filed in the office of the clerk of the court of private land claims in and for the Territory of New Mexico a petition, in which said J. B. Cesna *et al.* are plaintiffs and The United States of America is defendant; which said petition is in the words and figures following, to wit:

2½ Copy.

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

In the matter of private land claim of Dr. John G. Heath (Juan Gid).

In the Court of Private Land Claims, Santa Fé, New Mexico.

J. B. CESSNA, KATE CESSNA, His Wife; JOHN R. KEEDLE, MARY E. Keedle, His Wife; Esther G. Hunter, Eliza J. Bibb, Malon A. Bibb, Her Husband; Robert W. Sherman, Amelia C. Sherman, His Wife; Alice Wood, Alice N. Scott, Widow; James Scott, Guardian of L. Ethel Scott, Lucretia Scott, and Mabel Scott, Minor Children of Charles W. Scott, and Francis J. Heath, Widow of Robert J. Heath, Deceased, Grantees, Heirs, and Legal Representatives of John G. Heath, Deceased,
versus
THE UNITED STATES OF AMERICA and THE UNKNOWN OWNERS of the Doña Ana Bend Colony, Mesilla Colony, and Bracito Grants.

To the Honorable Joseph R. Reed, chief justice, and to the associate justices of the court of private land claims:

Your petitioners, the above-named plaintiffs, bring this their petition against the United States and others above named, and respect-

fully represent that said petitioners are the heirs-at-law and legal representatives of one John Heath, otherwise known and called by the Mexican people and authorities residing at Paso del Norte, in the present State of Chihuahua, in the Republic of Mexico, by the name of Juan Gid, that being the name, as spelled, which nearest corresponded in the Spanish language to John Heath in the English language, and thereupon your petitioners allege and say that on or about the twenty-seventh day of December, A. D. 1822, said John Heath alias Juan Gid addressed a petition to the Emperor of Mexico, through the office of the secretary of state of Mexico, requesting a grant to the lands and properties hereinafter mentioned and described, which said petition is not in the power, possession, or control of your petitioners, and they are not able to furnish a copy thereof; that on the third day of April, A. D. 1823, said John Heath alias Juan Gid applied to the ayuntamiento of El Paso, in the present State of Chihuahua, in Mexico, to know what had been done with his said petition which he had forwarded to the said Emperor through the former ayuntamiento of said town; whereupon he was informed that no reply had been received from the same, but that
3 through the civil and military governor or chief, in an official communication of March 2nd, A. D. 1823, there had been transmitted to said ayuntamiento and commanded to be published and carried out the decrees of the third of March of that year, emanating from the organic national junta and sanctioned by His Imperial Majesty, which treated of the subject of colonization, and that the said law was then read to said John Heath alias Juan Gid, and that he, being fully informed thereof, made a new application praying that by virtue of the law and his privilege the grant be made to him for an hacienda on the same tract that he had applied for, and so forth; all of which will more fully appear by the copy of the record of the town council of El Paso, dated April 3rd, 1823, a translation of which is herewith filed, marked "A," and made a part of this petition.

Your petitioners further allege that said Juan Gid presented his said petition to the said ayuntamiento, which seems to bear date on the seventh day of March, A. D. 1823, instead of the third day of March, but the same is attached to the official copy of said record of the proceedings of said ayuntamiento before referred to, in which said Gid represented that in December of the year preceding he had laid before the ayuntamiento, the predecessor of the one which he then addressed, his petition for said grant, and that the same had been sustained in all of its parts and forwarded by the said ayuntamiento to His Imperial Majesty under and by virtue of authority conferred upon them by the law of colonization, and that he had received no reply to the same; that under the act of the organic junta of the Empire of January the third, eighteen hundred and twenty-two, he applied *de novo*, repeating his prayer, with the addition thereto that he proposed to bring to the settlement of the land of the Bracito which he asked to be granted to him thirty families of Catholic Christians, among them mechanics, blacksmiths, armorers, silversmiths, carpenters, tailors, shoemakers, saddlers, archi-

tects, mathematicians, chemists, mineralogists, surgeons, and doctors, and to establish a hospital with the accompanying drug store, the same to be adequately stocked, together with necessary instruments for any operation, and also to establish a warehouse, stocked with all kinds of goods, to sell at wholesale, and to introduce the necessary machines for the manufacture of woollen and cotton cloths and another for the manufacture of powder, and proposing to do other things as in his said petition stated; a copy of which said petition, translated from the Spanish, is herewith filed, marked
4 Exhibit B, and made a part of this petition.

That in said petition he represented that in order to establish the said machinery, cultivate the land, and graze the live stock and promote other outdoor interests it was indispensable that the land be large enough to meet the requirements thereof, and that it should be at least enough for farms, and that it should be upon both sides of the river—that is, on both banks at the Bracito; that such settlement until time would permit the realization of the other calculations should be annexed to the parish of this jurisdiction; that the pasturage and woods should be used in common with the same privileges as other persons of that jurisdiction, and that no prejudice should be occasioned to the planting grounds, and that said John Heath alias Juan Gid, the petitioner, should be designated as the person for the distribution of the said land and to be respected as the legal justice for the said families; thereupon that he, having united himself with his brethren, the faithful people of the Empire, and being a peaceable citizen, in order to carry out the said colonization law, prayed that the people of the jurisdiction be informed of his petition, in order that those who chose to do so might agree and regulate themselves as they might deem right and proper, and he thereupon asked and prayed the said ayuntamiento to accede to his prayer; all of which will more fully appear by reference to the said copy of the translation from Spanish of the said petition, marked "B," and filed herewith as part of this petition.

That on the said seventh day of April, A. D. 1823, an order was made in the ayuntamiento, at the town hall of El Paso aforesaid, reciting that the said petition had been presented, and that the same was granted by that body upon the terms agreed upon that day, which being made known to Juan Gid he agreed to the same, and that the same should be published at that place on Sunday, the thirteenth of that month, for the purposes indicated; a copy of which said order and entry, translated from Spanish into English, marked Exhibit C, is filed herewith and made a part of this petition.

That another entry and order was thereafter made by the said ayuntamiento, at the said town of El Paso, on the thirteenth day of the month of April, 1823, in which it was recited that, being assembled at the hall of the town council with a large attendance of the people who had been called together by the customary previous notice, the petition of the said Juan Gid and the actions
5 thereon were publicly read, and the people having heard the same and being asked if they were satisfied with the new residents who intended to locate they answered in the affirmative,

manifesting satisfaction and no opposition; thereupon it was decided that upon the sixteenth day of that month, in pursuance of the said action, certain parties mentioned in said order, being the alcalde of the second election, the first alderman, the corporation attorney, and the corporation secretary, should go with the petitioner, Juan Gid, otherwise called John Heath, to the place Bracito for the purpose of executing the survey and carrying out the directions of the ayuntamiento under the decree of January the third of that year concerning the colonization; a copy of which said order or record, translated from Spanish to English, is herewith filed and made a part of this petition, marked Exhibit D, the same having been signed, as represented therein, by two alcaldes of the said jurisdiction and the secretary of the town council.

That afterwards, at the town hall of El Paso, on the fifteenth day of April, A. D. 1823, one Agapito Abo represented to the said town council or ayuntamiento that the fields and mills which the new settlers proposed to establish might in a few years be injurious to the old settlers of the entire jurisdiction on account of the water being cut off and consumed, so that it could not reach the other fields in the abundance desired, and after discussion of the same the said Juan Gid was called, who stated that should a scarcity of water occur it was understood by himself and the families with him that they would be governed by the laws of the Empire and by the regulations of the ayuntamientos, whose duty it was to see the laws properly distributed, and it was thereupon resolved by the town council or ayuntamiento to continue the execution of the decree of the thirteenth of that month made in compliance with the first action of the said ayuntamiento, a copy of which said order, translated into English, is herewith filed, marked Exhibit E, and made a part of this petition.

That on the said thirteenth day of April, A. D. 1823, the papers in the said application by said Juan Gid for said tract of land were turned over to the said parties directed to make said survey and give said possession, a copy of the order doing so, translated into English, being herewith filed, marked Exhibit F, and made a part of this petition.

6 That afterwards, on the seventeenth day of April, A. D. 1823, the commission appointed by the decrees of said ayuntamiento, consisting of four individuals, for the purpose of executing the papers in the case, having accepted the charge, proceeded to the place, where, in accordance with instructions, taking the head of the Bracito acequia for the central point of the estate to be given in possession to said Juan Gid, he, said Gid, in sign of possession, with an axe cut the bark of two cottonwood trees and where the wood of the trees was exposed wrote thereon "Hazda. do Dn. Juan Gid" and the year on both trees. The commission being then present as well as said Juan Gid, they appointed two surveyors, who promised to perform with fidelity the duties of their appointment. They were furnished with and received an iron chain in good condition, which, being measured, contained eleven varas of three geometric feet, as required by the colonization law; that immediately thereafter the

first survey was commenced, about one o'clock in the afternoon, towards the north. Having ascertained the point of commencement with perfect reliability, the same having been determined by an Anglo-American mathematician, who took the courses with a compass, concluding the measure at four o'clock on the same evening upon a hill, it being in line, a landmark, a cross, was placed, at the foot of which Juan Gid buried a stone with his name and the date written thereon, and which stone was acknowledged by him to be his legal boundary and to be the full measurement of two and a half leagues of five thousand varas from the center. Turning towards the east, the survey was commenced about three o'clock in the afternoon, using the compass for taking an air line, as there was no water observed on the course that might be desirable for a settlement or a ranch, and it was estimated that the two and a half leagues was reached upon a hill called La Cueva, in the Organ mountains. Then, taking up the survey at about half past four in the evening from the landmark, a cross, and running west, it was continued until sundown, passing on the line the road going to the Salt river, and, descending a ridge, a league and three cordels on one hundred and ten varas is completed. At sunrise the survey was again continued until completed at two and a half leagues, which was terminated upon a hill belonging to the Roblero mountains, between a black mountain on the left and a red one on the right, and with the same formality as with the other landmark the corner was placed at this point.

7 At about twelve o'clock the commission, the party interested, and the surveyors returned to the central point of said land, where about four o'clock p. m. the survey was taken up and run south, continuing the survey of the land until sunset, where a league and three cordels of one hundred and ten varas was finished. At sunrise the survey was continued until the two and a half leagues was completed, which was done in a small valley running up from the river towards the prairie below the Mesilla and opposite the Ochoa *cluffs*, where a landmark, a cross, was placed with the same formalities as the other landmarks, and, the survey being continued west from the line south with only the compass, the same was extended to where the two and a half leagues reached for the same reasons as given for the line run eastward to La Cueva of the Organ mountains, the line being completed at half past nine o'clock a. m. They then ran eastward from the termination of the line, running south. At about ten o'clock of the same day they reached the copper road, nineteen cordels of 110 varas, and up to the river 59 varas, where at midday they suspended, after which they resumed about two o'clock p. m. and continued until the two and a half leagues were finished, which was upon a hill lying to the right of the Trujillo salt lakes. Somewhat in advance of these, and opposite the last ridge of the El Paso mountains, called the Puer a de las Alamitas, and in line with the watering place called Las Crucitas, where was placed the corner landmark with the usual formality, with which proceeding the survey, with the varas of three geometrical feet, was concluded; whereupon the alcalde commis-

sioned inquired in legal form of the surveyors whether they had proceeded in the legal manner that they promised to observe upon running the first line they surveyed of that tract, and they replied that they had so acted and had no doubt and rested under no responsibility. Thereupon the party interested, Juan Gid, was asked whether he was satisfied with the whole survey made of the land, into full possession of which he was to enter under the colonization laws, and he replied that as he had witnesses — the formality that was observed throughout the execution of the survey of his land he was in all respects satisfied. With that understanding, and no claim being made to suspend the carrying out of the proceedings, the commission thereupon placed the said Juan Gid in lawful possession of the said land, informing him that the cultivable land he had upon the tract was the greater part of the prairie on the river
8 and that that land he should not use except for the cultivation of the edible grain and for the production of the necessaries for his agricultural business, and that the land granted him outside of the said river pra-rie was deemed sufficient for raising all kinds of live stock, charging him also that he should convey all the water he might use for the running of machinery he proposed to erect, as well as all other water, to the main channel, so that neither the city of El Paso nor the vicinage of which it was the seat should in any manner be injured. They then informed the said Gid that the object for which they had been commissioned was concluded. They reduced their proceedings to writing and the same was signed by the alcalde, Jose Morales, the four commissioners, and one of the surveyors. They then reported the same on the twenty-first day of April, 1823, to the said ayuntamiento. A copy of their proceedings, so reduced to writing, translated into English, is herewith filed, marked Exhibit G, and made a part of this petition, together with a copy of the record made as to the report of the same.

That afterwards, to wit, on the twenty-second day of April, A. D. 1823, proceedings were had by the ayuntamiento in the town hall of El Paso, in which they recited the receipt of the report of the said commission as to the execution of the survey that was to be made of the Bracito tract to be five leagues on each course, the whole comprising an hacienda conformably with article five of the colonization law, and which tract, as stated, was granted to said Juan Gid for settlement, as set forth, and he agreeing to what was done in the premises in all respects by the commission, the same was reduced to writing; a copy of which said order, translated into English, is herewith filed, marked Exhibit H, and made a part of this petition.

Your petitioner- further states that the measurements used were based upon the vara, composed of three geometrical feet, in making said survey, and not of thirty-three inches, and that the land in question comprises a tract of land of twenty-five square leagues of five thousand varas each, each vara being three feet, with the center of said tract at the head of the Bracito acequia, as set out in the papers before referred to, and extended two and a half leagues from said center to each cardinal point of the compass; that said land is

situate in the present county of Donna Ana, in the Territory of New Mexico.

That afterwards, on the twenty-third day of April, A. D.
9 1823, the said Juan Gid presented to the said ayuntamiento a map or plat of said land as surveyed, drawn by Guillermo Box, a mathematician, showing the courses according to the survey which was executed of the Bracito tract, which appearing to the ayuntamiento it was annexed to the papers for its clearness and exactness, and a copy is marked Ex. "O" and made a part of this petition.

Afterwards, to wit, on the twenty-fifth day of April, 1823, an order was made by the ayuntamiento to annex to the papers in reference to the said grant the resolution of that body passed on the third of that month conerning the grant to Juan Gid, which is the paper herewith filed, marked Exhibit A, and afterwards, on the day last mentioned, the said ayuntamiento made an order that, it being considered by the ayuntamiento that that case was concluded in which the tract of the Bracito was granted for settlement to Juan Gid, an Anglo-American of the United States, the fee on the same should be assessed in accordance with the tariff governing the ayuntamiento, by its secretary, that Gid might be advised of the fees he should pay for what had been done in the case, and it also provided the original of said papers should be filed for perpetual evidence, and that by the first mail a certified copy thereof should be forwarded to the governor of the province for his information, and a like copy to the party interested for his security; a copy of which said order is filed herewith, marked Exhibit I; all of which said papers are included in one general exhibit herewith filed, marked Exhibit K, to which is attached the certificate made by the secretary of the ayuntamiento; that the same are a copy from the original papers, drawn up at the request of Juan Gid in the grant to him for settlement of the Bracito tract of land, under the colonization laws, together with other documents elsewhere referred to, and that the original thereof remained duly on file, to which he certified.

The said Exhibit K is a correct translation of the said copies which were forwarded to the governor of the province of New Mexico, and which said copy so forwarded to him has ever since remained on file among the archives of the Territory of New Mexico and is now on file as one of the original papers belonging to the archives in the office of the surveyor general of the Territory of New Mexico; to which reference is hereby made for a more specific understanding of the same. A correct copy of the same in Spanish is also herewith filed, marked Exhibit L, and made a part of this petition.

10 Petitioners allege that the said Juan Gid complied with all the conditions and requirements of said grant and the laws under which it was made, so far as he was required to do by law and the acts of the grantor.

Petitioners further show that by virtue of the proceedings above recited and mentioned the grant to said Juan Gid became an abso-

lute and perfect grant, and the said Juan Gid obtained a perfect title to said land, and that your petitioners, as his heirs, descendants, and legal representatives of his heirs and descendants, have become and are the owners in fee of said lands and entitled to the same as an absolute and perfect grant and are entitled to so hold and possess the same.

Petitioners further state that there are three settlements either wholly or in part within the limits of said grant, one being the settlement known as the Doña Ana Bend colony, another being the settlement known as the Mesilla colony, and the other being the Hugh Stevenson tract of land, so called; that the said settlements comprise two or three thousand people, the names of said settlers constituting them being to your petitioners unknown, and they being also too numerous to mention herein, your petitioners being all residents beyond the limits of this Territory and not being familiar with the names of the persons residing within the limits of said tracts of land, and that they are therefore unable to give the names of any of the parties so residing within the said limits; and petitioners are informed that some other supposed grants or concessions have been made by the United States to individuals unknown to petitioners, which grants of land petitioners cannot now specify or describe nor give the names of the parties to whom they were made, and petitioners therefore pray that proper notice may be given to such of them as this court shall direct and in the manner this court may direct.

This said claim of petitioners to said lands has never been confirmed, considered, or acted upon by Congress or the authorities of the United States or heretofore submitted to any authorities of the United States or to any authorities constituted by law for the adjustment of land titles within the limits of said Territory of New Mexico so acquired by the United States, and by them has not been reported on unfavorably or recommended for confirmation or authorized to be surveyed; but the protocol of the original papers making said grant has always been preserved in the archives at Santa Fé, Territory of New Mexico, and reported by the
11 surveyor general of said Territory within recent years to the United States General Land Office, at Washington, as document No. 505, relating to Mexican and Spanish land grants, in archive No. 410.

Petitioners further state that said Juan Gid, alias Dr. John Heath, was a Roman Catholic and professed the Roman Catholic religion, the only religion of the country of Mexico, "having united himself with his brethren, the faithful people of the Empire."

And petitioners further file map heretofore marked Exhibit "O" and included in the grant papers and made a part of this petition as being a correct plat of the land in dispute.

Petitioners therefore pray that this their petition be considered by this honorable court, and that the validity of said grant of lands so made as aforesaid be enquired into and decided, and that said tract, with the boundaries hereinbefore set forth, be confirmed unto the

plaintiffs, their heirs and assigns forever, and for such other and general relief as to this honorable court may seem meet and proper.

And petitioners will ever pray.

(Signed) J. B. CESSNA,
Attorney for Petitioners.

Copy.

12 And be it further remembered that afterwards, to wit, on the 10th day of March, A. D. 1893, the same being the third day of the March term, A. D. 1893, the following proceedings were had in the said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

Come now the petitioners, by J. B. Cesna, Esq., and the defendant, by Matt. G. Reynolds, Esq., United States attorney, and said petitioners, by their said attorney, moved the court that service of summons be made upon Numa Raymond, John A. Barncastle, Josefa Barncastle, Manuel Banegas, Thomas J. Bull, and many other unknown persons, parties defendant in the above-entitled cause.

Whereupon the court considered the names of the proposed parties defendant were not properly named, and denied the motion.

13 And be it further remembered that afterwards, to wit, on the tenth day of March, A. D. 1893, being the third day of the March term, A. D. 1893, the following further proceedings were had in the said court, to wit:

J. B. CESSNA *et al.*
vs.
UNITED STATES.

Come now the petitioners, by their attorneys, J. B. Cessna, Esq., and the defendants, by Matt. G. Reynolds, Esq., United States attorney. Upon the filing and reading the petition of plaintiffs in the above-entitled cause and upon the representations in said petition, as well as of counsel for plaintiffs, that many of the defendants herein are unknown and to- numerous to mention in said petition and too numerous for personal service of the process of this court, and upon the filing and reading of a notice of the pendency of this suit proposed by plaintiffs to be given by publication, the court, being sufficiently advised in the premises, hereby orders that service of process upon the defendants herein may be made by publication of said notice herein filed in both English and Spanish for two successive weekly insertions in some newspapers printed and circulated in the county in which the land involved in this suit is situate, or in some newspaper or newspapers near said land and having general circulation in that county, and that proof of such publication of notice shall be made by the affidavit of the publisher or editor of said newspaper or newspapers in the manner now provided by law for district courts of this Territory.

14 Be it further remembered that afterwards, to wit, on the 28th day of April, A. D. 1893, an answer was filed in said cause in the office of said clerk; which said answer is in the words and figures following, to wit:

15 UNITED STATES OF AMERICA, } *ss:*
Territory of New Mexico, }

In the matter of private land claim of John G. Heath (Juan Gid).

In the United States Court of Private Land Claims, Sitting at Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
THE UNITED STATES OF AMERICA and THE UNKNOWN OWNERS OF the Dona Ana Bend Colony, Mesilla Colony, and Bracito Grants.

F. C. Gay, M. Reynolds, C. S. Cross, and J. L. Stubbs, by their attorney, Samuel H. Baker, now come and answer the plaintiffs' petition in the above-entitled action, and, answering, say—

That they are the owners of that portion of the lands heretofore granted to the Mesilla colony which is described as follows:

From corner No. 1, in center of old river bed, thence corner No. 7 of property of William Steele bears N. 18° 35′ W. 561 ft.; thence from corner No. 1, meandering center of old river bed, S. 30° 10′ E. 900 ft. to corner No. 2; thence S. 20° W. 648 ft. to corner No. 3; thence S. 61° W. 550 ft. to corner No. 4; thence S. 82° 24′ W. 515 ft. to corner No. 5; thence N. 63° 05′ W. 1,504 ft. to corner No. 6; thence S. 88° 30′ W. 564 — to corner No. 7; thence S. 47° 04′ W. 1,044.5 ft. to corner No. 8; thence S. 50° 47′ E. 688 ft. to corner No. 9; thence across old river bed S. 20° 55′ W. 300 ft. to corner No. 10, on right bank of old river bed; thence S. 40° 10′ W. 909 ft. to corner No. 11; thence S. E. corner of old house is N. 60° W. 25 ft. distant; thence S. 75° 50′ W. 150 ft. to corner No. 12; thence S. 49° 16′ W. 410.8 ft. to corner No. 13, on east side public road running from La Mesilla to Picachio and about 10 ft. southwest from S. W. corner of bridge; thence up E. side of said road N. 30° 03′ W. 2,722.3 ft. to corner No. 14 (M); thence continuing up E. side *said* of said road N. 34° 20′ W. 1,562.5 ft. to corner No. 15 (S); thence N. 65° 54′ E. 1,285 ft. to corner No. 16 (K); thence proceeding down center of old river bed N. 25° 04′ E. 726 ft. to corner No. 17 (J); thence N. 44° 58′ E. 710 ft. to corner No. 18 (T); thence S.

16 86° 30′ E. 700 ft. to corner No. 19 (H); thence S. 45° 58′ E. 653 ft. to corner No. 20 (G); thence S. 62° 52′ E. 1,000 ft. to corner No. 21 (F); thence N. 85° 24′ E. 302 ft. to corner No. 22 (E); thence N. 49° 33′ E. 900 ft. to corner No. 23 (D); thence W. 67° 18′ E. 837.5 ft. to corner No. 24 (C); thence S. 72° 24′ E. 285.8 ft. to corner No. 25 (B); thence S. 40° 06′ E. 289 ft. to corner No. 26 (A), same as corner No. 7 of property of William Steele; thence S. 18° 35′ E. 561 ft. to corner No. 1, the place of beginning, all in the

county of Donna Ana, Territory of New Mexico; which tract is known as the Duhalde tract and embraces 303 acres, more or less, in the said the Mesilla Colony grant by good and indefeasible title in fee-simple.

And that the said defendants do deny each and every material allegation made in plaintiffs' petition aforesaid, and, on the contrary, allege that they, the defendants, are the owners of the above-described land.

Wherefore defendants pray for judgment of the honorable court confirming to them the title of the above-described tract of land and for their costs in this action, and for such other relief as to the court may seem just and to equity may appertain.

SAMUEL H. BAKER,
Attorney for Defendants Gay, Reynolds, Cross, and Stubbs, of the Mesilla Colony.

17 Be it further remembered that afterwards, to wit, on the twentieth day of June, A. D. 1893, a demurrer was filed in the said cause in the office of said clerk in the words and figures following:

18 In the Court of Private Land Claims, Territory of New Mexico.

JOHN B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

The demurrer of The United States and Numa Raymond, John D. Barncastle and Josefa Barncastle, his wife, and Manuel Banegas, defendants, to the petition of the said John B. Cessna and others, claimants.

These defendants, by protestation, not confessing all or any of the matters and things in the claimants' petition contained to be true in manner and form as the same are therein set forth and alleged, do demur to said petition and for cause of demurrer show the following:

1. That the claimants have not in and by their said petition made or stated such a case as entitles them in this honorable court to any relief as to the matters contained in said petition or any of such matters.

2. That said petition sets up and pleads a mere conclusion of law instead of the facts from which such conclusion might be drawn when it alleges that said Juan Gid complied with all the conditions and requirements of said grant and the laws under which it was made so far as he was required to do by law and the acts of the grantor.

3. That said petition fails to show that Juan Gid ever brought to the settlement of the land alleged to be granted thirty or any other number of families of Christian Catholics, as he was required to do

by the terms of his alleged grant, or that he ever did any of the other things required of him by the terms of said alleged grant.

4. That said petition sets up an alleged grant by the ayuntamiento of El Paso under the colonization law of January 3, 1823, but fails to show that said ayuntamiento acted in conformity with the orders or instructions of the government, or that any such
19 orders or instructions had been made by the government.

5. That said petition lacks certainty of time because it does not show when Juan Gid complied with the conditions and requirements of said grant and the laws under which it was made.

6. That said petition and the exhibits filed therewith and made a part thereof show that said Juan Gid asked for and the ayuntamiento intended to give one hacienda, while the land claimed is five haciendas in extent.

7. That said petition fails to show that the ayuntamiento had any authority to increase the amount of land granted above the quantity specified in article eight of said colonization law.

8. That said petition fails to show that the said Juan Gid cultivated the land alleged to have been granted or any portion thereof within two years after the date of the concession.

9. That the exhibits which are filed with and made a part of the said petition show that the said Juan Gid should have ownership of only the lands which could be used for farming, manufactures, machinery, &c., and of no other lands, while the petition claims twenty-five square leagues of land, obviously including land of other kinds.

10. That said petition fails to show that said Juan Gid ever made any claim to the land or had any possession of it or exercised any dominion over it at any time after April 16, 1823.

11. That said exhibits show that said alleged grant was made with a reservation as to the superior determination of the government, to which a report was to be made, but shows nothing as to what such superior determination may have been, while the failure of Juan Gid to claim, possess, or exercise dominion over the
20 land after April, 1823, raises a presumption that such superior determination must have been adverse.

12. That said petition is in other respects uncertain, informal, and insufficient.

Wherefore the said defendants pray judgment of this honorable court as to whether they should be required to make any other answer to the said petition, and that said petition may be dismissed.

MATT. G. REYNOLDS, *U. S. Att'y.*
S. B. NEWCOMB,
Solicitor for Defendants.
F. W. CLANCY,
Of Counsel for Def'ts.

I, the undersigned, Frank W. Clancy, of counsel for defendants named in the foregoing demurrer, do hereby certify that in my opinion the said demurrer is well founded in point of law.

FRANK W. CLANCY.

TERRITORY OF NEW MEXICO, }
County of Donna Ana. }

Numa Reymond, being duly sworn, upon his oath says that he is one of the defendants named in the foregoing demurrer, and that the said demurrer is not interposed for delay.

NUMA REYMOND.

Subscribed and sworn to before me on this 5th day of June, 1893.

{ Seal of Morris Freudenthal, Notary Public, Las Cruces, Donna Ana Co., N. M. }

MORRIS FREUDENTHAL,
Notary Public, Donna Ana Co., New Mexico.

21 And be it further remembered that afterwards, to wit, on the eighteenth day of July, A. D. 1893, being the first day of July term, A. D. 1893, the following further proceedings were had in the said court, to wit:

J. B. CESNA }
vs.
UNITED STATES. }

The above-entitled cause was set for trial on the 21st inst.

22 And be it further remembered that afterwards, to wit, on the twenty-eight day of July, A. D. 1893, being the ninth day of the July term, A. D. 1893, the following further proceedings were had in the said court, to wit:

J. B. CESNA *et al.* }
vs.
UNITED STATES. }

The above-entitled cause having come up for argument on the demurrer of the United States, there appeared Matt. G. Reynolds, Esq., United States attorney; F. W. Clancy, attorney of the Doña Ana Bend Colony grant; J. B. Cesna, attorney for plaintiffs in the cause, and Henry L. Waldo, Esq., representing the Rio Grande Land Co. This demurrer was filed by F. W. Clancy, in behalf of the Doña Ana Bend Colony grant, and joined in by the United States, through its attorney, Matt. G. Reynolds, Esq., and by the Rio Grande Land Company, represented by Henry L. Waldo, Esq., F. B. Catron, Esq., associated with J. B. Cesna in defending the grant title.

After full arguments by counsel the court, wishing to take the matter at issue under consideration and not being sufficiently advised, took the same under advisement.

23 & 24 Be it further remembered that afterwards, to wit, on the 31st of July, A. D. 1893, the same being the eleventh day of the July term, A. D. 1893, the following further proceedings were had in the said court, to wit:

J. B. CESSNA *et al.*
vs.
THE UNITED STATES.

In the above-entitled cause the court, having had the demurrer filed on June 20, 1893, herein under advisement and being fully advised in the premises, this day overruled the same, and it is so ordered. The above demurrer was argued on the 28th inst.

25 Be it further remembered that afterwards, to wit, on February 16th, A. D. 1894, an answer was filed in said cause in the office of said clerk; which said answer is in the words and figures as follows:

26 UNITED STATES OF AMERICA,
Territory of New Mexico.

In the Court of Private Land Claims.

J. B. CESSNA *et al.*, Petitioners,
and
THE UNITED STATES OF AMERICA and THE UNKNOWN OWNERS OF the Doña Ana Bend Colony, Mesilla Colony, and Bracito Grant, Respondents.

Answer.

The joint and several answers of The Rio Grande Land Company and The New Mexico Town Company, corporations organized under the laws of the Territory of New Mexico, the respondents herein, to the petition of the said petitioners.

These respondents reserving to themselves all right of exception to the said petition, for answer thereto severally say that they, or any, or either of them to the knowledge or belief of the others or other of them do not know, and have never been informed, save by the said petitioners' petition, and cannot set forth as to their belief or otherwise whether one John Heath, alias Juan Gid, addressed a petition to the Emperor of Mexico, through the office of the secretary of the State of Mexico, requesting a grant of the lands and properties in the said petition described; or, whether on the third day of April, A. D. 1823, the said John Heath, alias Juan Gid, applied to the ayuntamiento of El Paso in the present State of Chihuahua in Mexico, to know what had been done with his said petition which he had forwarded to the said Emperor through the former ayuntamiento of said town; or whether the said John Heath, afterwards, on the third or seventh of March, A. D. 1823, applied, *de novo*, to said ayuntamiento, for the grant of the said tract of land; or, whether, on the seventh day of April, A. D. 1823, an order was made in the said ayuntamiento at the town hall of El Paso, aforesaid, reciting that the said petition had been forwarded, and that the same was granted by that body upon the terms agreed upon that day, which being made known to Juan Gid, he agreed to the same, and that the same should be published at that place on

Sunday, the thirteenth of that month, for the purpose indicated; or, whether another entry and order was made thereafter by the said ayuntamiento at the said town of El Paso, on April 13th, 1823, in which it was recited that being assembled at the hall of the town council with a large attendance of the people, who had been called together by the customary previous notice, the petition of said Juan Gid and the actions thereon were publicly read, and the people having heard the same, and being asked if they were satisfied with the new resi-
27 dents who intended to locate, they answered in the affirmative, whereupon it was decided that upon the sixteenth day of that month certain parties mentioned in said order, should go with the petitioner, Juan Gid, to the place "Bracito," for the purpose of executing the survey, and carrying out the directions of the ayuntamiento under the decree of January 3d, 1823, concerning colonization; or, whether on the said April 13th, 1823, the papers in the said application by said Juan Gid for said tract of land were turned over to the said parties directed to make said survey, and give said possession; or, whether afterwards, on April 17th, A. D. 1823, the commission appointed by the decree of the said ayuntamiento, consisting of four individuals, for the purpose of executing the papers in the case, having accepted the charge, proceeded to the place, where, in accordance with instructions they surveyed the tract of land in the manner and form as in said petitioners' petition herein is fully described and set forth, and said survey having been completed, the party interested, the said Juan Gid, was asked whether he was satisfied with the whole survey made of the land into full possession of which he was to enter, under the colonization law; and he replied that as he had witnessed the formality that was observed throughout the execution of the survey of his land, he was in all respects satisfied; or, whether, the said commission thereupon placed the said Juan Gid in lawful possession of the said land, and reduced their proceedings to writing, and the same was signed by the alcalde, the four commissioners and one of the surveyors; and then reported the same, on April 21st, 1823, to the said ayuntamiento, or whether, afterwards, to wit, on April 22d, A. D. 1823, proceedings were had by the ayuntamiento in the town hall of El Paso, in which they recited the receipt of the report of the said commission, as to the execution of the survey that was to be made of the Bracito tract, to be five leagues on each course, the whole comprising an hacienda, conformably with article 5 of the colonization law; and which tract as stated was granted to said Juan Gid for settlement, as set forth, and he agreeing to what was done in the premises, in all respects, by the commission, the same was reduced to writing; or whether afterwards, on April 23d, 1823, the said Juan Gid presented to the said ayuntamiento a map or plat of the
28 land surveyed, drawn by Guillermo Box, showing the courses, according to the survey which was executed of the Bracito tract, which appearing to the ayuntamiento it was annexed to the papers; or whether, afterwards, to wit, on April 25th, 1823, an order was made by the ayuntamiento to annex to the papers in reference

to the said grant the resolution of that body passed on the third of that month, concerning the grant to Juan Gid, or whether, on the day last mentioned, the said ayuntamiento made a further order that that case was concluded, in which the tract of the Bracito was granted for settlement to Juan Gid, an Anglo-American of the United States, the fee on the same should be assessed in accordance with the tariff governing the ayuntamiento; and that the original of the said papers should be filed for perpetual evidence, and that by the first mail a certified copy thereof should be forwarded to the governor of the province for his information, and a like copy to the party interested for his security; or whether the said Juan Gid complied with all of the conditions and requirements of said grant and the laws under which it was made, so far as was required to do by law, and the acts of the grantor.

And these respondents further jointly and severally answering, deny that by virtue of the proceedings of the ayuntami-nto of El Paso and of the said Juan Gid, that any lawful title to the said tract of land in the said petition described vested in the said Juan Gid, or that the said Juan Gid thereby obtained an absolute and perfect title to the said tract of land, and further answering say that, under and by virtue of the provisions of the law of January 4th, 1823, or of the provisions of any other law then in force, the ayuntamiento of El Paso had no power or authority to make a grant of land to said Juan Gid in manner and form set forth in the petitioners' petition; and that the said constituent congress of Mexico decreed, on April 8th, 1823, that all acts of the preceding government, being the government by which the said colonization law of January 4th, 1823, was enacted, under the provisions of which the petitioners in their petition claim the said alleged grant to John Heath, or Juan Gid was made, from May 19th, 1822 to May 29th, 1823, were illegal, and subject to be revised, confirmed or revoked by the government then established; and that the said colonization law of Jan-
29 uary 4th, 1823, was afterwards, to wit, on April 11th, 1823, by the decree of the said congress, suspended until a new resolution on the subject, by reason whereof, all the proceedings of the said ayuntamiento of El Paso respecting the said alleged grant of land was illegal and void and of no effect.

And these respondents further, jointly and severally answering say, that they are informed, and believe, that whatever right, title or claim the said Juan Gid may have had or become seized of, by virtue of the said proceedings of the said ayuntamiento of El Paso respecting the said tract of land, in the said petitioners' petition more fully described and set forth, was annulled and forfeited by the said Juan Gid, by reason of his having, some time during the year 1824, abandoned the said tract of land, and left and removed from the Republic of Mexico; and that by reason thereof, whatever right, title, interest or claim the said Juan Gid may have had, or acquired, by reason of the said proceedings of the said ayuntamiento, in the said tract of land, was by virtue of the laws and ordinances of the Republic of Mexico, annulled and forfeited to the government of the Republic, and the said tract of land thereby became

vacant or public land and was subject to be regranted by the proper and lawful authorities.

And these respondents further, jointly and severally answering say, that the petitioners herein in their said petition set up and claim title to the said tract or grant of land, in the said petition more fully described, as the heirs and legal representatives of the said John Heath, or Juan Gid, deceased; and that these respondents are informed, and believed to be true, that the said John Heath, or Juan Gid was, at the time of his death, domiciliated in the United States of America, and a citizen of that Republic; and that at that time the heirs of the said John Heath, or Juan Gid were domiciliated in the said United States of America and citizens of that Republic; that the said heirs being so as aforesaid domiciliated and citizens of the United States under and by virtue of the laws of Spain or of the Indies, or of the law of the junta instituente of January 4th, 1823, or of the laws of the Republic of Mexico, in such case made and provided, could acquire, by inheritance, no right, title, or interest in or to the land, so as aforesaid claimed by the petitioners to have been granted to their ancestor, the said John Heath or Juan Gid.

30 And these respondents, jointly and severally, further answering say that heretofore, some time during the year 1822 or 1823 a grant of land was made to one Juan Antonio Garcia, which said tract of land is now situated in Donna Ana county, in the Territory of New Mexico, and is bounded and described as follows, "Beginning at a point on the Rio Grande known as the mouth of the Bracito acequia, and running south along the said river a distance of three leagues to a lake known as the Trujillo lake, and thence extending back towards the east from said river to range of sandy hills, varying in distance from two to four and a half miles; thence in a northerly direction along the said sand hills, varying from two to four and a half miles from the river to a point due east of the place of beginning, and thence to the place of beginning;" that the said grant or tract of land was confirmed to the heirs and legal represent-s of the said Garcia by the act of Congress of the United States entitled, "An act to confirm certain land claims in the Territory of New Mexico" approved June 21st, 1860; and duly surveyed by the surveyor general of New Mexico, as will more fully appear by reference to the field-notes and plat of said survey which are filed and of record in the office of said surveyor general, said tract comprising a part of township 24 and 25 south, ranges 2 and 3, east of the principal base and meridian lines in New Mexico, these respondents further say, that the said grant, and the said possession so as aforesaid given of said tract of land, invested the said Garcia with a title in full possession, that is, in fee-simple, to the said tract of land; and that he and his heirs and legal representatives, have remained in the possession of the same from that day to the present time; and that these respondents hold and claim title and possession of and to a part of the said tract of land by *mense* conveyances from the original grantee, his heirs and legal representatives; and that the said tract of land is included within the outboundaries of the tract of

land which the petitioners in their petition claim was granted to the said John Heath or Juan Gid.

And these respondents, jointly and severally, further answering says that, pursuant to the law of the Republic of Mexico of August 19th, 1848, and the colonization regulations as issued by the
31 supreme government of the State of Chihuahua on March 22d, 1851, enacted in pursuance thereof, one Guadalupe Miranda, commissioner general of the removal of Mexican families to the national territory, and the establishment of colonies, placed certain Mexican citizens in possession of a tract of land in the State of Chihuahua, now in the county of Donna Ana, in the Territory of New Mexico by the following boundaries and manner following, viz:

"I, Guadalupe Miranda, commissioner general for the removal of Mexican families to the national territory and the establishment of colonies, do certify that this fourth day of August, one thousand eight hundred and fifty-three, I proceeded to the Mesilla colony, on the right hand of the Rio Bravo del Norte, and in the name of the supreme powers of the nation and those of the State government, I have, for the commons of the same as a new colony, determined, designated and placed landmarks to two leagues of agricultural land extended along the bend, as the five thousand varas which the area should contain to square it cannot be obtained in the principal part thereof between the river and the drainings of the hills; and ascending to the mouth, it narrows until it joins the hills at the Picacho mountain; and two leagues on the mountains and plains for pasturing live stock, in accordance with article 2 of the regulations of May 22d, 1851, and in consideration of the large population this na-cent colony has, and to give it more advantages and conveniences, the citizens are required, and they are disposed to divide themselves into two communities as even as possible, one of them wherever it may be selected, and the other at the Picacho mesa, as they have already under cultivation all the arable lands, a circumstance that I have kept in view in granting them the extent of planting land the bend contains, which is embraced in the following measurements, and the two leagues for pasture land: Having designated yesterday, the third instant, the line that divides this colony of Mesilla, and that of Santo Tomas de Iturbide, in the presence of the authorities of both, and many others, the first landmark was established on the east near an arm of the river, about eight varas distant, where there are some small marked cotton trees, and on a small sand hill; from thence west, south of the Mesilla and north of the Santo Tomas colony, lines run with the cordel to a hill in front of the ruins of
32 a corral, called the Guerras corral, making five thousand varas on the hill, and the landmark was established continuing toward the north; on the west the measurement was made with the cordel on the slope or drainings of the hills, in a direct line toward the Picacho hill on the river side, and when it touches the hills; thence continuing the measurements along the margin of the river, it reached the Penasco Prieto hill, which is to the north of the small bend called the Apache ford, a little above the Picacho,

making 19,500 varas, returning to commence at the first point at the edge of the river of the colonies of Santo Tomas, and this of the Mesilla was fixed when the dividing line on the north from the small sand hill; thence to the north on the east, following the bank of the river in a direct line, in the direction of the Picacho, on the margin of the said river, where it reaches the hills, and following the bank very close to the Penasco Prieto, which is situated on the north of the small bend called the Apache Ford bend, making 20,000 varas, with which three measurements, the area of the cultivable was determined. From this point of the Penasco Prieto west, on the north over the hills, there *was* measured 5,000 varas, and a landmark was established on a hill near the dividing line; thence to the south on the west were measured 10,000 varas, which reach below the present plaza of Mesilla, the landmark was established in the plain; thence east on the south 5,000 varas were measured off, which reach to the drainings of the hills, and intersected the line of the arable lands, and in conformity with article 4 of said regulations, the lines having been designated by mounds of earth and some marked trees, the authorities being directed to establish the extreme boundaries of the admeasurement by placing mounds of stone and morter, to the end that lapse of time do not destroy them, that they may be always observed and respected as the metes and bounds of the commons."

Your respondents further say that the said possession, so as aforesaid given of said tract of land, invested the inhabitants of the said colony with a title in full possession, that is, in fee-simple, to the said tract of land; and that they, and their heirs and legal representatives, have remained in the possession of the same from that day to the present time; and that these respondents hold and claim title and possession of and to a part of the said tract of land by
33 mense conveyances from the original grantees, their heirs and legal representatives; and that the said tract of land lies and is included within the outboundaries of the tract of land which the petitioners in their petition claim was granted to the said John Heath or Juan Gid; and these respondents further say, that the heirs and legal representatives of the said original grantees of the said colony, some time in the year 1874 presented the same, pursuant to the provisions of the act of Congress in such case made and provided, to the surveyor general of New Mexico for confirmation; and that the said surveyor general on February 12th, 1874, recommended to the Congress of the United States that the title to the said tract of land *to* be confirmed to the inhabitants of the said Mesilla civil colony, and their legal representatives according to the boundaries set forth in the grant papers executed by the said Guadalupe Miranda, commissioner, August 4th, 1854.

And these respondents, jointly and severally, further answering say that, pursuant to the decree of the Republic of Mexico of August 19th, 1848, and the colonization regulations issued by the supreme government of the State of Chihuahua, on March 22, 1851, enacted in pursuance thereof, one Ramon Ortiz, commissioner general for the removal of Mexican families to the national territory, and the

establishment of civil colonies in the State of Chihuahua, placed certain Mexican citizens in possession of a tract of land in the said State, now in the county of Donna Ana in the Territory of New Mexico known as the "Civil Colony of Refugio." The Rio Grande river bounds said colony and grant of land on the east, and on the west it is bounded by a line running parallel with the general course of the said river, about a mile west of the top of the foothills or mesa bordering the valley of said Rio Grande river on its west bank.

Monuments of stones were placed at the corners of said grant, that is to say; one monument was placed immediately on the bank of said Rio Grande river, on its western side, and about the middle of the lands occupied by Estanislaucano Alvillar in the year 1873, that is, about midway on said land from north to south. Another monument was placed nearly west of said last-mentioned monument about a mile back of the top of the mesa lands, or foot-
34 hills. A line drawn from one of these monuments to the other is the northern boundary of said grant. Another monument was placed at the western boundary of said Rio Grande river, near a place known as "El Alto de los Cuarones," about four miles down said Rio Grande river from the first-mentioned monument, and another monument was placed nearly west of this last-mentioned monument, and about a mile west of the top of the foothills or mesas before described. A line drawn direct from one of these last-named monuments to the other one, constitutes the south boundary of the said grant. A line drawn between the two western monuments, from one to the other, and parallel to the general course of the said Rio Grande river, is the western boundary of said grant; and the said Rio Grande river, between the two monuments before described, on the bank of the said river, is the eastern boundary of said grant. Your respondents further say, that the said possession, so as aforesaid given of said tract of land, invested the inhabitants of the said colony with a title in full possession, that is, in fee simple, to the said tract of land; and that they, and their heirs and legal representatives, have remained in the possession of the same from that day until the present time; and these respondents hold and claim title and possession of and to a part of the said tract of land by *mense* conveyances from the original grantees, their heirs and legal representatives; and that the said tract of land lies and is included within the outboundaries of the tract of land which the petitioners in their said petition claim was granted to the said John Heath, or Juan Gid; and these respondents further say, that the heirs and legal representatives of the said original grantees of the said colony, some time during the year 1873, presented the same, pursuant to the provisions of the act of Congress in such case made and provided, to the surveyor general of New Mexico for confirmation; and that the said surveyor general, on May 18th, 1874, recommended to the Congress of the United States that the title to the said tract of land be confirmed to the inhabitants of the said Refugio civil colony, and their legal representatives according to the boundaries set forth in the record filed in his office.

And these defendants jointly and severally deny all and all
35 manner of unlawful combination and confederacy, wherewith they are by the said petition charged, without this, that there is any other matter, cause, or thing in the said petitioners' petition contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to swear, maintain, and prove as this honorable court shall direct, and humbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully *con*tained.

JAMES W. VROOM AND
RALPH E. TWITCHELL,
Solicitors for Respondents.

36 UNITED STATES OF AMERICA, } ss.:
Territory of New Mexico, }

Be it further remembered that afterwards, to wit, on the first day of March, A. D. 1895, a replication was filed in said cause in the office of said clerk; which said replication is in the words and figures following, to wit:

37 In the United States Court of Private Land Claims, Sitting at Santa Fé, New Mexico.

J. B. CESSNA *et al.* }
vs.
UNITED STATES *et al.* }

Replication.

The petitioners, reserving to themselves all right of exception to the answer of the defendants or respondents, reply as follows: They deny each and every allegation of new matter or pretended claim of title to any portion of said land covered by plaintiffs' petition, as set forth in respondents' answer.

And these petitioners further deny that by virtue of any legal proceedings whatever during the year 1822 or 1823, or any other time whatever, a grant of land was ever made by the Mexican government to Juan Antonio Garcio, as claimed in respondents' answer, and described as beginning at a point on the Rio Grand- river on the mouth of the Bracito acequio, etc., etc., and more particularly described in respondents' answer.

That said pretended grant was never made by any Mexican authority or authorities having, at the time, the right of authority to make grants of the public lands of the Republic of Mexico, and further allege that said land had been previously granted by Mexican authority to Juan Gid or Dr. John G. Heath, under which plaintiffs claim, whose right and title is superior to all others.

38 The petitioners deny *that* this supposed grant and confirmation by Congress of the United States June 21, 1860, as

claimed by respondents, and further deny that the said Garcio or his successors were ever invested in any manner with the legal or equitable title or any right or title whatever to the land they claim in their answer, or any portion thereof, being part of the land covered by plaintiffs' petition.

The petitioners say they have no knowledge as to whether the respondents are successors to Garcio or not, except what is stated in respondents' answer, and they deny the same and call for proof.

The petitioners further deny that by virtue of the proceedings set forth in respondents' answer, or that by virtue of any other proceedings whatever, the Messillo colony ever became legally, equitably, or lawfully invested with a title in fee or otherwise to any portions of said land described in plaintiffs' petition, said land as claimed by said respondents and other defendants being particularly described in their said answer, because said pretended grant was made without any right or legal authority to make grants of the public domain of the Republic of Mexico, and said pretended possession was without any legal authority; and, further, this said pretended grant to the said Messillo colony, as set up by the respondents, was wholly illegal and void and was made of land that had been previously granted and possession thereof given by the Mexican government to the said Juan Gid, under whom the plaintiff's claim title.

The petitioners say they have no knowledge as to whether the respondents are successors to Messillo colony or not, except what is stated in respondents' and*s*wer, and they deny the same and call for proof.

The petitioners further deny that by virtue of the proceedings set forth in respondents' answer, or that by virtue of any other proceedings whatever, the civil colony of Repugio ever became
39 legally, equitably, or lawfully invested with a title in fee or otherwise to any portion of said land described in plaintiffs' petition—said land, as claimed by said respondents and other defendants, being particularly described in their said answer—because said pretended grant was made without any right or legal authority to make grants of the public domain of the Republic of Mexico, and said pretended possession was without any legal authority; and, further, that said pretended grant to the said civil colony of Repugio, as set up by the respondents, was wholly illegal and void and was made of land that had been previously granted and possession thereof given by the Mexican government to the said Juan Gid, under whom the plaintiffs claim title.

The petitioners say they have no knowledge as to whether the respondents are successors to the civil colony of Repugio or not, except what is stated in respondents' answer, and they deny the same and call for proof.

All this the plaintiffs are ready to verify and pray may be inquired of by the country.

J. B. CESSNA,
Attorney for Petitioners.

40 Be it further remembered that afterwards, to wit, on the twentieth day of May, A. D. 1895, an answer was filed in the said cause in the office of the said clerk; which said answer is in the words and figures following:

41 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, May Term of Court, 1895, Santa Fé, N. M.

J. B. CESSNA *et al.*, Plaintiffs,
vs.
UNITED STATES, Defendant. } Juan Gid or John Heath Grant.

Answer.

The United States, reserving to itself all right of exception to the said petition, and for its separate answer thereto, says it has no knowledge or belief and has never been informed, save by the petition of said petitioners, of the existence of said alleged claim or grant, or that the plaintiffs or one John Heath, alias Juan Gid, ever claimed any interest therein.

It has no knowledge or information and has never been informed as to whether John Heath, alias Juan Gid, addressed a petition to the Emperor of Mexico, through the office of the secretary of the State of Mexico, requesting a grant of the lands and properties in the said petition described; or whether, on the third day of April, A. D. 1823, the said John Heath, alias Juan Gid, applied to the ayuntamiento of El Paso, in the present State of Chihuahua, in Mexico, to know what had been done with his said petition which he had forwarded to the said Emperor through the former ayuntamiento of said town; or whether the said John Heath afterwards, on the third or seventh day of March, A. D. 1823, applied *de novo* to said ayuntamiento for the grant of the said tract of land; or whether, on the seventh day of April, A. D. 1823, an order was made *in* the said ayuntamiento, at the town hall of El Paso, afterwards reciting

42 that the said petition had been forwarded, and that the same was granted by that body upon the terms agreed upon that day, which being made known to Juan Gid, he agreed to the same, and that the same should be published at that place on Sunday, the thirteenth of that month, for the purpose indicated; or whether another entry and order was made thereafter by the said ayuntamiento at the said town of El Paso, on April 13, 1823, in which it was recited that being assembled at the hall of the town council with a large attendance of the people, who had been called together by the customary previous notice, the petition of said Juan Gid and the actions thereon were publicly read, and the people having heard the same and being asked if they were satisfied with the new residents who intended to locate, they answered in the affirmative, whereupon it was decided that upon the sixteenth day of that month certain parties mentioned in said order should go with the petitioner Juan Gid to the place "Bracito" for the purpose of executing the

survey and carrying out the directions of the ayuntamiento under the decree of January 3, 1823, concerning colonization; or whether, on the said April 13, 1823, the papers in the said application by said Juan Gid for said tract of land were turned over to the said parties directed to make said survey and give said possession, or whether afterwards, on April 17, A. D. 1823, the commission appointed by the decree of the said ayuntamiento, consisting of four individuals, for the purpose of executing the papers in the case, having accepted the charge, proceeded to the place, where, in accordance with instructions, they surveyed the tract of land in the manner and form as in said petitioners' petition herein is fully described and set forth, and, said survey having been completed, the party interested, the said Juan Gid, was asked whether he was satisfied with the whole survey made of the land into full possession of which he was to enter under the colonization law, and he replied that as he had witnessed the formality that was observed throughout the execution of the survey of his land he was in all respects satisfied; or whether the said commission thereupon placed the said Juan Gid in lawful possession of the said land, and reduced their proceedings to writing, and the same was signed by the alcalde, the four commissioners, and
43 one of the surveyors and then reported the same on April 21, 1823, to the said ayuntamiento, or whether afterwards, to wit, on April 22, A. D. 1823, proceedings were had by the ayuntamiento in the town hall of El Paso, in which they recited the receipt of the report of the Bracito tract to be five leagues on each course, the whole comprising an hacienda, conformably with article 5 of the colonization law, and which tract, as stated, was granted to said Juan Gid for settlement, as set forth, and he agreeing to what was done in the premises in all respects by the commission, the same was reduced to writing; or whether afterwards, on April 23, 1823, the said Juan Gid presented to the said ayuntamiento a map or plat of the land as surveyed, drawn by Guillermo Box, showing the courses according to the survey which was executed of the Bracito tract, which appearing to the ayuntamiento it was annexed to the papers; or whether afterwards, to wit, on April 25, 1823, an order was made by the ayuntamiento to annex to the papers in reference to the said grant the resolution of that body passed on the third of that month concerning the grant to Juan Gid; or whether on the day last mentioned the said ayuntamiento made a further order that — that case was concluded in which the tract of the Bracito was granted for settlement to Juan Gid, an Anglo-American of the United States, the fee on the same should be assessed in accordance with the tariff governing the ayuntamiento, and that the original of the said papers should be filed for perpetual evidence, and that by the first mail a certified copy thereof should be forwarded to the governor of the province for his information, and a like copy to the party interested for his security; or whether the said Juan Gid complied with all of the conditions and requirements of said grant and the laws under which it was made so far as was required to do by law and the acts of the grantor.

And the United States, further answering, denies that by virtue of

the proceedings of the ayuntamiento of El Paso and of the said Juan Gid that any lawful title to the said tract of land in the said petition described vested in the said Juan Gid, or that the said Juan Gid thereby obtained an absolute and perfect title to the
44 said tract of land; and, further answering, says that under and by virtue of the provisions of the law of January 4, 1823, or of the provisions of any other law then in force, the ayuntamiento of El Paso had no power or authority to make a grant of land to said Juan Gid in manner and form set forth in the petitioner's petition, and that the said constituent congress of Mexico decreed on April 7, 1823, that all acts of the preceding government, being the government by which the said colonization law of January 4, 1823, was enacted, under the provisions of which the petitioners in their petition claim the said alleged grant to John Heath or Juan Gid was made from May 19, 1822, to March 29, 1823, were illegal and subject to be revised, confirmed, or revoked by the government then established, and that the said colonization law of January 4, 1823, was afterwards, to wit, on April 11, 1823, by the decree of the said congress suspended until a new resolution on the subject, by reason whereof all the proceedings of the said ayuntamiento of El Paso respecting the said alleged grant of land *was* illegal and void and of no effect.

Further answering, the United States says that on the 11th day of April, 1823, the constituent congress suspended the colonization law of January 4, 1823, and authorized persons who had acquired rights under said law to present their claims to the new government for the ratification or rejection, and that said Heath did not nor did any one for him ever present to said Mexican government, as provided by law, said claim for ratification and approval, and by reason of his failure to so present the same abandoned and released the same to said government.

That from the time of said alleged grant until the treaty of Guadalupe Hidalgo said Heath did not nor did any — for him ever present to the Mexican government any claim for said property or ever asserted any right to or ownership over the same, but totally abandoned it.

That from the change of sovereignty under the treaty of Guadalupe Hidalgo to the institution of this suit, although there existed a law of July 22, 1854, for the assertion of such claims, said Heath did not nor did any — for him or in his behalf ever assert any
45 interest in or right to said property in any way.

That for the space of seventy years prior to the institution of this suit no claim was ever asserted by said Heath or any one for him or in his behalf or for any interest in said property in any of the tribunals in any manner, as provided by the laws of Mexico or the United States.

And the United States, further answering, says that it is informed and believes that said Gid some time in the year 1824 left permanently the Republic of Mexico without having alienated said land and became domiciliated in the United States of America, and

thereby abandoned and forfeited all rights to or interest in said property to the Mexican nation.

The United States, further answering, says that the petitioners herein in their said petition set up a claim to said tract or grant of land in said petition, more fully described as the heirs and legal representatives of the said John Heath or Juan Gid, deceased.

That the United States is informed, and believes it to be true, that said John Heath never at any time lawfully became a citizen of the Mexican Empire or the Mexican Republic, but was at all times until his death a citizen and resident of the United States of America and domiciliated therein, and at that time and at all times thereafter up to the present the heirs of said John Heath or Juan Gid were citizens and residents of the United States of America and domiciliated therein. Heirs as citizens of the United States under and by virtue of the laws of the Republic of Mexico in such case made and provided could acquire by inheritance no right, title, or interest in or to the land so aforesaid claimed by the petitioners to have been granted to their ancestor, the said John Heath or Juan Gid.

46 And the United States, further answering, says that it is informed and believes that in the years 1851, '2, '3 the commissioner general of the Republic of Mexico to found and establish civil colonies in the State of Chihuahua, Republic of Mexico, and pretending to act on behalf of the national government, located and settled upon a portion of the land included within the outboundaries of the alleged grant of said Juan Gid west of the Rio Grande river several colonies of Mexican citizens and distributed the land among said colonists. Said colonies were known as the "Mesilla civil colony" and the "Santo Tomas de Iturbide;" which said colonies and allottees thereof and those claiming under them have ever since been in the actual possession of the same, but whether said action by said commissioner was authorized by law and whether his action in that behalf was properly and lawfully taken, so as to vest said colonists or any of them with title against the Mexican nation and the United States, it is not informed, but says that claims for the land so assigned by said commissioner to said colonists are now being prosecuted in this court under the provisions of the act of Congress approved March 3rd, 1891, creating the court of private land claims, and the stipulations of the Gadsden treaty, made December 30th, 1853, and ratified June 20th, 1854, but as to whether the same are valid and subsisting claims this defendant has no knowledge or information sufficient to enable it to form a belief.

The exact description of the land so allotted to said colonists this defendant cannot state, but the said lands are within the outboundaries of this grant, as above stated.

And the United States, further answering, says that it is informed and believes that in the year 1853 the commissioner general and agent for the government of Mexico for the emigration of New Mexicans and establishing and regulating the colonies on the right bank of the Rio del Norte, in the district of Brazos, in the State of

Chihuahua, and claiming to act for the Republic of Mexico,
47 did grant to one Jose Manuel Sanchez Baca a tract of land situate on the west bank of the Rio del Norte within the outboundaries of the said alleged grant made to said Juan Gid, and the said Jose Manuel Sanchez Baca and his heirs and assigns have been in possession of the said tract of land so claimed to have been granted to him by said commissioner ever since the date of said alleged grant, but as to whether said action by said commissioner was authorized by law and whether his action in that behalf was properly and lawfully taken so as to vest said Jose Manuel Sanchez Baca with title against the Mexican nation and the United States it is not informed, but says that a claim for said land is now being prosecuted in this court under the provisions of the act of Congress approved March 3rd, 1891, creating the court of private land claims, and in the stipulations of the Gadsden treaty made December 30th, 1853, and ratified June 20th, 1854, but as to whether or not the same is a valid claim this defendant has no knowledge or information sufficient to enable it to form a belief.

Further answering, the United States says that it is informed that between the years 1839 and 1844 certain officials of the department and alleged State of Chihuahua undertook to appropriate a large portion of the property included within the outboundaries of the alleged grant to Juan Gid lying east of the Rio Grande river by colonizing upon the same a number of Mexican citizens, commonly known and called the Don Anna Bend colony, and a large number of Mexican citizens were placed upon said property by the said officials and allotments made to them of land, which they and those claiming under them have been continuously since in possession of. The exact description of the property so alleged to have *have* allotted to the Don Anna Bend colonists defendant cannot state further than that it lies within the outboundaries of the said John Heath grant.

That as to whether in making said allotment and giving posession to said colonists, jointly or severally, said officials were author-
ized by law thereto it has no knowledge or information
48 sufficient to enable it to form a belief, but says there is now pending in the court of private land claims a suit for the confirmation of said claim under the provisions of the act of March 3, 1891, creating the court of private land claims, and according to the stipulations of the treaty of Guadalupe Hidalgo, under which the United States acquired sovereignty over the same, but as to whether or not the acts of said officials created any right of property in said colonists or in any of them against the Mexican government or the United States it has no knowledge or information sufficient to enable it to form a belief.

And the United States, further answering, says that said tract of land so alleged to have been granted to said John Heath having been abandoned and forfeited, as herein set forth, and the United States, having received the same under the treaty of Guadalupe Hidalgo as a part of the public domain, extended its public surveys over a large portion of said tract and a large number of entries

under the public land laws of the United States have been made within its exterior boundaries, and this defendant charges that such extension of public surveys over the said tract was a resumption of sovereignty by the United States over the same and was a forfeiture declared by the United States of all right, title, and interest in said lands which the said John Heath might have had therein.

Said defendant, further answering, says that by the terms of said alleged grant the same was made subject to the approval thereof by the governor and the territorial deputation of the Territory of New Mexico within whose jurisdiction the said lands were situated, and that the said alleged grant after the making thereof was transmitted to said governor and territorial deputation for their approval, and such action was taken by the said governor and said territorial deputation that the said grant was disapproved and declared by them to be without warrant and authority of law in the said ayuntamiento of El Paso to make the same.

Wherefore the United States says that by reason of the
49 facts aforesaid said claim is not one which under the laws of nations, the treaties of cession, or the laws or ordinances of the government of Mexico or the principals of equity or the act creating this court it is bound to recognize; and it therefore prays that said grant may be rejected and plaintiffs' petition dismissed.

(Signed) MATT. G. REYNOLDS,
U. S. Attorney.

50 Be it further remembered that afterwards, to wit, on the 21st day of May, A. D. 1895, the same being the 7th day of the May term, A. D. 1895, the following further proceedings were had in the said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

The above-entitled cause having been set out for trial at a former term of the court, and the same cause now coming on to be heard, it is ordered by the court that this cause be, and the same hereby is, reset for trial on the 14th day of June, 1895.

51 Be it further remembered that afterwards, to wit, on the 18th day of June, 1895, the same being the 30th day of the May term, A. D. 1895, the following further proceedings were had in the said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

The above-entitled cause now being called for trial, there appeared J. B. Cesna and T. B. Catron, Esqs., for and on behalf of the petitioners herein; James W. Vroom, Ralph E. Twitchell, and Henry L. Waldo, Esqs., for and on behalf of the Rio Grande Town Com-

pany and New Mexico Land Company; E. A. Fiske and C. H. Springer representing the heirs and unknown owners of the Bracito grant; Summers Burkhardt, Esq., assistant United States attorney, representing the said defendant, The United States. The trial of the cause was procee led with on the pleadings presented.

Documentary proof was introduced, and, the same not being completed, *when* the court adjourned until tomorrow at 10 o'clock a. m.

52 Be it further remembered that afterwards, to wit, on the 19th day of June, A. D. 1895, the same being the 31st day of — May —, 1895, the following further proceedings were had in the said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

The trial of the above-entitled cause was resumed. All the attorneys in the cause being present, further oral and documentary proof was introduced, and, the cause not being complete, *when* the court adjourned until tomorrow at 10 o'clock a. m.

53 Be it further remembered that afterwards, on the 10th day of June, A. D. 1895, an answer was filed in said cause in the office of said clerk; which said answer is in the words and figures following, to wit:

54 In the United States Court of Private Land Claims.

J. B. CESSNA *et al.*
vs.
THE UNITED STATES *et al.*

The answer of Sarah V. Casad, Humbolt Casad, Alice Casad, Maud Casad, Jessie Casad, Gertrude Casad, Darwin Casad, Thomas Casad, Leonora White, R. J. White, Jennie Lane and N. D. Lane, her husband, and Herman Casad Smith, widow and heirs of the late Thomas Casad, claimants and owners of a portion and part of the Brazito grant and made defendants in this cause as unknown owners of said Brazito grant, to the petition of J. B. Cessna *et al.*, petitioners.

These defendants, for answer to the petition of the said J. B. Cessna *et al.*, respectfully show unto your honors that they do not know and are not advised whether one John Heath, alias Juan Gid, made a petition to the ayuntamiento of El Paso, as stated in said petition, nor whether the said ayuntamiento did or performed any or all of the acts set forth in said petition, nor whether any proceedings were had, as stated in said petitioners' said petition, nor whether the said ayuntamiento of El Paso made or pretended to make any grant to John Heath, alias Juan Gid, as stated in said petition, or marked off to or surveyed to or put the said John Heath,

alias Juan Gid, into the possession of any tract or portion of land, as set forth in said petition of said petitioners, nor that any such land was measured or was in extent from the center thereof, as stated in said petitioners' said petition, nor that any plat of said land was made, as stated in said petition of said petitioners; and these defendants, therefore, neither admit nor deny said allegations and statements of said petitioners' said petition, but leave the said petitioners to their proof thereof as they shall be advised.

55 And these defendants, further answering, deny that any grant of land was made by any lawful authority of the government of Mexico to said John Heath or Juan Gid, as in said petitioners' said petition stated, and deny that the said John Heath or Juan Gid complied with all or any of the conditions or requirements of any such grant, as stated in said petitioners' said petition, and deny that any grant or pretended grant to said Juan Gid became an absolute and perfect grant or grant of any right, title, or interest in or to any lands, as stated in said petition, and that said petitioners or any of them are heirs, descendants, or legal representatives of the said Juan Gid, or that they or any of them are owners in fee or of any interest in the lands mentioned in said petition of said petitioners or any part thereof, and deny that said petitioners or any of them have any right, title, or interest therein under the proceedings stated and set forth in said petitioners' said petition.

And these defendants, further answering, state that they admit that within the limits of the said pretended grant to the said John Heath, alias Juan Gid, there is a large number of settlements and many people residing, as stated in said petitioners' said petition.

And these defendants, further answering, show unto your honors that in the year 1822 and before the date of the alleged making of the said pretended grant to John Heath, alias Juan Gid, the said grant known as the Brazito grant, and in which these defendants claim title and interest, was made by the duly constituted authorities of the Mexican government to one Juan Antonio Garcia, who then and there became and was the lawful owner of the said Brazito grant, with boundaries beginning at a point on the Rio

56 Grande, known as the mouth of the Brazito acequia, and running south along the said river to a lake known as Trujillo lake, and thence extending back towards the east from said river to a range of sand hills, and thence in a northerly direction along said sand hills to a point due east from the place of beginning, and thence to the place of beginning, containing about 18,000 acres; that thereafter, on, to wit, the 6th day of August, 1856, the said grant to the said Juan Antonio Garcia was presented to the surveyor general of the United States for the Territory of New Mexico, as claim No. 32, for approval under the provisions of the act of Congress approved July 22, 1854, and thereafter, upon the archive and other documentary evidence and oral testimony then and there produced before the said surveyor general, the said grant to the said Juan Antonio Garcia was duly tried and determined by the said surveyor general, and by the opinion of the said surveyor general, dated at Santa Fé, N. M., on the 31st day of December, 1856, the

said grant was by the said surveyor general adjudged to be a good and valid grant and by the said surveyor general recommended for confirmation to the said Juan Antonio Garcia by the Congress of the United States, and duly transmitted the title papers of said grant and his opinion and his said recommendation to the Commissioner of the General Land Office of the United States, at Washington; that thereafter the said Commissioner of the General Land Office, by his letter dated February 10th, 1857, in due form of law, submitted the said grant and said recommendation of the said surveyor general to the Hon. Secretary of the Interior of the United States, and that thereafter, on, to wit, the 11th day of February, 1857, the said Secretary of the Department of the Interior of the United States
57 duly transmitted the said grant, with the said recommendation of the said surveyor general aforesaid, to the Congress of the United States; that thereafter, on, to wit, the 12th day of January, 1858, the said surveyor general of the Territory of New Mexico, in his letter of that date, recommended to the Hon. Commissioner of the General Land Office of the United States, at Washington, D. C., a renumbering of the claims and grants by him recommended for confirmation, and in such renumbering the said grant to the said Juan Antonio Garcia was numbered as grant No. 6, which said recommendation for the renumbering of said claims was by the Commissioner of the said General Land Office, on the 2nd day of March, 1858, duly transmitted to the Secretary of the Interior, and thereafter, on the 28th day of March, A. D. 1858, by said Secretary of the Interior to the Congress of the United States; and thereafter, by section 1 of an act of said Congress approved June 21st, A. D. 1860, and duly printed as chapter 167 of the Statutes at Large of the United States, at page 71 thereof, the said Congress of the United States duly confirmed the said grant to Juan A. Garcia, as recommended by the said surveyor general of New Mexico, whereby the said grant so recommended as aforesaid became and was a perfect title to the said Juan Antonio Garcia and his legal representatives for all and singular the land mentioned and described in the said grant and the said recommendation of the said surveyor general of the Territory of New Mexico; and thereupon these defendants, further answering, state and show unto your honors that under and by virtue of the act of Congress approved on the 3rd day of March, 1891, as set forth and indicated in the fourth clause of the
58 13th section of the said act and in the 14th section of said act, the said petitioners are estopped and prohibited from claiming or setting up any claim to any part or portion of the said Brazito grant so made to the said Juan Antonio Garcia and so allowed and lawfully acted upon and decided by the said Congress of the United States and so conveyed and granted by the said United States to the said Juan Antonio Garcia and his legal representatives as aforesaid.

And these defendants, further answering, state and show unto your honor that the said pretended title papers, as set forth and referred to in the said petitioners' said petition, were, if executed as stated in the said petition, so made and executed without any au-

thority of law, and were null, void, and of no effect whatever, and especially were not in accordance with or conformity to the decree or law of Mexico of the 3rd day of January, A. D. 1823, under which said alleged grant to said John Heath or Juan Gid is pretended to have been made.

And these defendants, further answering, state and show unto your honors that after the said pretended acts and the said pretended grant, as stated in said petition of said petitioners, on, to wit, the 24th day of June, 1823, the said pretended grant and all proceedings relative thereto were annulled by the superior authority of the said ayuntamiento, at El Paso, who in the petitioners' said petition is therein alleged to have made said pretended grant.

And these defendants, further answering, state and show unto your honors that the said decree of January 23rd, 1823, as to the said proceedings made and had as stated in said petitioners' said petition, and under which said petitioners claim and allege that a grant was made to the said John Heath, alias Juan Gid, was on,
59 to wit, the 8th day of April, 1823, annulled, as the same appears in section 2 of the decree of the Mexican government of the 8th day of April, 1823, as the same appears duly entered in vol. II of the official collection of ordinances and decrees of the congress of the Mexican nation, on page 90 of the 2nd edition thereof.

And these defendants, further answering, state and show unto your honors that on, to wit, the 11th day of April, 1823, the proper authorities of the said Mexican nation suspended the said colonization law of January 3rd, 1823, as the same appears in the said official book of said orders, decrees, and acts of the congress of the Mexican nation, on page 94 thereof.

And these defendants hope that they shall have the same benefit and advantage by this their answer as they would if they had demurred to the said petition of the said petitioners.

EUGENE A. FISKE,
FRANK SPRINGER,
Solicitors for Above Defendants.

60 And be it further remembered that afterwards, to wit, on the 20th day of June, A. D. 1895, the same being the 32nd day of the May term, 1895, the following further proceedings were had in said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

The trial of the above-entitled cause was resumed. All the attorneys in the cause being present, further oral and documentary proof was introduced, after which the cause was partially argued by counsel, and, the arguments not being concluded, the court adjourned until tomorrow at 10 o'clock a. m.

61 Be it further remembered that afterwards, to wit, on the twentieth day of June, A. D. 1895, a certificate of the official

translator was filed in said cause in the office of said clerk; which said certificate is in the words and figures as following:

62 *Official Translation of Article 4th of National Colonization Law of 4th of January, 1823, Correcting Tipton's Translation of the Same to be Found in Defendant's Exhibit No. 6 in Cessna vs. United States.*

"The families who came of themselves to settle shall present themselves immediately to the respective ayuntamiento of the place at which they desire to establish themselves in order that, in conformity with the orders which they may find from the executive, there be designated to them by that body the lands to which they are entitled according to the industry which they are going to undertake."

Translated by me from the original Spanish on this 20th day of June, A. D. 1895, and I certify that it is true and correct.

EUSEBIO CHACON,
Official Interpreter and Translator,
Court of Private Land Claims.

63 And be it further remembered that afterwards, to wit, on the 21st day of June, A. D. 1895, the same being the 33th — of the May term, A. D. 1895, the following further proceedings were had in the said court, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

The hearing of the above-entitled case was resumed. All the attorneys in the cause being present, further arguments were presented by counsel on both sides, and, the same not being concluded, the court adjourned until tomorrow at 10 a. m.

64 And be it further remembered that afterwards, to wit, on the 22d day of June, A. D. 1895, the same being the 33d day of the May term, 1895, the following further proceedings were had in the said cause, to wit:

J. B. CESNA *et al.*
vs.
UNITED STATES.

In the above-entitled cause the court resumed the hearing of arguments by counsel, and, the same having been concluded, the cause was submitted, and the court, not being sufficiently advised in the premises, took the said cause under advisement.

65 Be it further remembered that upon the trial and hearing of said cause before said court of private land claims the following proceedings, as reported by the official stenographer of said court, were had, to wit:

66 In the Court of Private Land Claims, District of New Mexico.

J. B. CESSNA *et al.*
vs.
THE UNITED STATES *et al.* } No. 59. (Juan Heath Grant.)

Transcript of Trial.

Upon the trial of this cause, commencing the 18th day of June, A. D. 1895, the following proceedings were had, to wit:

Counsel for the parties:

J. B. Cessna (*per se*) and T. B. Catron, for the petitioners.

Matt. G. Reynolds, Esq., Summers Burkhart, Esq., for the United States.

F. Springer, Esq., H. L. Waldo, Esq., S. B. Newcomb, Esq., E. A. Fiske, Esq., J. W. Vroom, Esq., for certain respondents.

67 Mr. CESSNA: We shall offer the grant which was made to us by the Mexican government under the law of January 4th, 1823.

(Nothing identified.)

I will read first the depositions which pertain to that question.

Mr. SPRINGER: If the court please, there are a number of questions and matters connected with these depositions to which objections can be made and will be made. I am not acquainted with the practice of this tribunal as to whether it is necessary to make the objections to each question or whether we can make a general objection and save the right to offer such other objections as we may think proper. There is a large amount of this testimony, for instance, which we consider hearsay, but I do not desire to interrupt the reading to interpose objections.

Mr. CESSNA: I would prefer that objections would be made and the argument on them all at once.

By the COURT: You may offer your objections all at once and present the points when the case is argued.

Mr. SPRINGER: I shall object to the proposed exhibits as being irrelevant, incompetent, and immaterial for any purpose in this case, and I will make a general objection to the testimony of these witnesses as being hearsay, irrelevant, and immaterial.

(Upon counsel being asked to which paper he referred in the first part of his objection he stated the instrument offered in connection with the first deposition)—Ex. C.

Mr. CESSNA: We offer in evidence the first deposition—that of Enrique Palmer.

(Which said deposition was marked Exhibit "A" and read to the court.)

68 The next deposition is that of Mrs. Belinda N. Jones, which I offer in evidence.

(Which said deposition was marked Exhibit "B" and read to the court.)

I now offer a certified copy of the records of Louisiana to show that this notary public was a notary.

(Which said document was marked Exhibit "C" and read to the court.)

I next offer in evidence deposition of Eliza J. Bibb.

(Which said document was marked Exhibit "D" and read to the court.)

Mr. SPRINGER: Admitted subject to an objection on the part of the defendants to all the testimony of the witness which purports to give statements made to witness by other persons, it being an attempt to give testimony about matters of which witness shows no personal knowledge, and we move to strike out all such answers of that character.

Mr. CESSNA: We next offer the deposition of Francis I. Heath in evidence.

(Which said deposition was marked Exhibit "E" and read to the court.)

Now offer in evidence the deposition of John Best.

(Which said deposition was marked Exhibit "F" and read to the court.)

I now offer in evidence the deposition of Mrs. Esther C. Hunter taken in this cause.

(Which said document was marked Exhibit — and read to the court.)

Mr. CATRON: We now offer in evidence the deposition of John B. Keedle taken in this cause.

69 (Which said deposition was marked Exhibit "G" and read to the court.)

We now offer the deposition of Mary R. Keedle taken in this cause.

(Which said deposition was marked Exhibit "H" and read to the court.)

Offer in evidence testimony of Major H. H. Hughes taken by deposition.

(Which said deposition was marked Exhibit "I" and read to the court.)

Now we offer in evidence the deposition of James Bryan.

(Which said deposition was marked Exhibit "J" and read to the court.)

We next offer in evidence the deposition of Charles A. Woodruff taken herein.

(Which said deposition was marked Exhibit "K" and read to the court.)

We now desire to offer the deposition of Magdalena de Carranco taken in this cause.

(Which said deposition was marked Exhibit "L" and read to the court.)

At the completion of which court was ordered to stand adjourned until tomorrow (Wednesday) morning at 10 o'clock a. m.

WEDNESDAY, *June 19th*, 1895, at 10 o'clock a. m.

Court met, pursuant to adjournment, and the following proceedings were had in this cause, to wit:

Mr. CATRON: We now offer the deposition of Price Cooper.

(Which said deposition was marked Exhibit "M" and read to the court.)

70 We now offer the deposition of Gregoria Herrera taken in this cause.

(Which said document was marked Exhibit "N" and read to the court.)

Now offer the deposition of T. T. Teel taken in this cause.

(Which said deposition was marked Exhibit "O" and read to the court.)

Mr. CESSNA: I have now a number of certified copies of deeds for properties in Missouri, made by John G. Heath, from the records of deeds of the different counties. The object of these is to show first the circumstances of Heath, and to show that he disposed of his property and that he prepared to leave for good. I will not read them, but I will give a general synopsis of them. I first offer now this deed (interrupted)——

Mr. SPRINGER: Defendants object to the introduction of these deeds as being irrelevant.

Mr. FISKE: And that objection will go to all of them. It makes no difference whether he disposed of his property or whether he gave it away so far as this case is concerned.

Mr. CATRON: The court will consider that to the extent of showing his good faith—the good faith of Heath in disposing of this land with the intention of leaving it.

Mr. FISKE: Even if he sold his lands and intended to go that is no evidence that he did go, and therefore is absolutely immaterial.

Mr. CATRON: It is a circumstance showing that he did go.

Mr. FISKE: It is a circumstance showing one thing, that he sold his land and no more. It is not a circumstance that he went on this property.

Mr. CATRON: It is a circumstance showing that he intended to go and that he intended to stay.

71 By the COURT: They may be introduced subject to the objection.

Mr. CESSNA: We offer in evidence deed from John G. Heath to Robert A. Heath, dated the 17th of April, 1824, for various tracts of land.

(Which said document was marked Exhibit "P.")

We next offer deed, John G. Heath to Robert A. Heath, dated April 17th, 18—.

(Which said document was marked Exhibit "Q.")

Next offer certified copy of bill of sale, Robert A. Heath and John G. Heath to Joseph Reavis, dated the 6th of April, 1824.

We next offer copy of the record, certified to by the authorities of the city of Mexico, of the first petition referred to in the second petition of John G. Heath, made in 1822, prior to the law of 1823, referred to in the present petition.

Mr. FISKE: Has it been translated?

Mr. CATRON: Part of it is found in English and part of it is in Spanish.

(Which said document was marked Exhibit "S.")

Mr. FISKE: I ask that it be read, so that we can get a general idea of what it is.

Mr. SPRINGER: We desire to reserve the right to make any objections we may desire after having a copy and translation of it to examine.

(Said document was then translated verbally to the court by the official interpreter.)

Mr. CESSNA: We now offer properly certified letters of guardianship to James Scott, the estate of L. Ethel Scott *et al.*, dated
72 January 11th, 1893.

(Which said document was marked Exhibit "T.")

I now offer deed, R. W. Sherman to J. B. Cessna.

(Which said document was marked Exhibit "U.")

Mr. CESSNA: I have a certified copy of the grant. We will introduce the original and use the certified copy, filed in the office on the 17th of June, 1823, and is archive No. 410.

(Which said document was marked Exhibit "V.")

Mr. FISKE: If the court please, I understand *as* a part of this grant is a- action of the departmental assembly, and that they offer all the papers.

Mr. CATRON: That is a separate paper, not a part of the grant, and we shall offer that for what it is.

Mr. CESSNA: Yes; that is another paper.

Mr. VROOM: On behalf of the respondants we object to the reception in evidence of archive No. 410, entitled "Heath, John G.; grant, 1823, No. 505," now on file in the office of the United States surveyor general for New Mexico, because:

1st. The ayuntamiento of El Paso had no power under the provisions of the decree of the junta instituyente of January 4th, 1823, providing for "the distribution of land to foreigners who come to colonize," to grant lands to the said Heath either as an empresario or contractor or as a colonist.

2nd. Because the concession to the said Heath conferred but an inceptive and inchoate title, which was not confirmed by either the governor and provincial deputation of New Mexico or by the supreme government.

3rd. Because the said archive No. 410 is neither the protocol nor testimonio of the alleged concession to the said Heath, and that no foundation has been laid by the petitioners for the introduction of these papers as secondary ecidence.

73 4th. Because the said concession was not "located or duly recorded in the archives of Mexico," as required by article VI of the treaty between the United States and Mexico, dated December 30, 1853.

Mr. SPRINGER: And we object also to the copy offered here as not being a correct copy of the original.

Mr. CESSNA: What we next offer is an extract from the proceed-

ings of the departmental assembly, dated the 17th of June, 1823, both in Spanish and English, properly certified.

(Which said document was marked Exhibit "W" and read to the court.)

Mr. SPRINGER: We object to the translation of it as not being correct.

Petitioners rest.

For the United States and Other Respondants.

The several answers read to the court.

Mr. BURKHART: We will introduce in evidence the original letters transmitting the copy of the proceedings of the ayuntamiento of El Paso to the governor of New Mexico, included in and as a part of archive 410.

(Which said document was marked Defendants' Exhibit No. 1 and a translation thereof marked Defendants' Exhibit No. 2.)

We also ask to introduce a certified copy from the archives of Juarez, a letter from Francisco Javier Chaves, secretary of
74 the provincial deputation, to the ayuntamiento of El Paso, dated June 19th, 1823, which is a letter advising that body of the action of the provincial deputation of New Mexico on the Heath grant.

(Which said document was marked Defendants' Exhibit 3 and translation thereof marked Defendants' Exhibit 4.)

Mr. CATRON: We object to it as being made subsequent to the vesture of title in the grantee, and therefore immaterial and incompetent.

Mr. BURKHART: We next desire to offer the Iturbide colonization law of 1823, which is archive No. 1107.

(Which said document was marked Defendants' Exhibit No. 5.)

We also file copies of articles 2 and 4 of that law and translations of the same.

(Which said copies of articles 2 and 4 are marked Defendants' Exhibit No. "5*a*" and translations thereof Defendants' Exhibit 6.)

We also offer in evidence a translation of the decree of the constituent congress of Mexico of date April 8th, 1823.

(Which said translation is marked Defendants' Exhibit No. 7.)

We next offer in evidence decree of the constituent congress of Mexico of date April 11th, 1823—translation of it.

(Which said document was marked Defendants' Exhibit No. 8.)

We offer in evidence translation of the title papers in this case—that is, of archive 410, according to our claim.

(Which said document was marked Defendants' Exhibit No. 9.)

We next offer in evidence the report of the U. S. surveyor
75 general for New Mexico in reported No. 6, filed in the surveyor general's office.

(Which said document was marked Defendants' Exhibit No. 10.)

Mr. CATRON: We object to it as irrelevant and immaterial.

CHARLES F. EASLEY, a witness called and sworn on behalf of the respondants, testified as follows:

Direct examination by Mr. BURKHART:

Q. What official position, if any, do you occupy?
A. The office of surveyor general.
Q. Have you in your possession the files of a claim presented to the surveyor general known as the Stevenson grant, reported No. 6?
A. Yes, sir.
Q. Have you them with you?
A. Yes, sir.

(Witness produces papers.)

Mr. BURKHART: We introduce in evidence the files of the claim known as the Stevenson grant, reported No. 6 in the surveyor general's office and confirmed by Congress.

Mr. CATRON: We wish it to go in subject to the objection.

Q. What is that (show- witness a map)?
A. This is file No. 7 in the Hugh Stevenson case, reported No. 6. It purports to be a sketch or map of the Bracito tract of land made from a survey executed by one Steven Archer, deputy surveyor.

(By Mr. FISKE:)

Q. Is that map included among the papers of this claim submitted by the surveyor general of New Mexico in his report to Congress recommending this claim for confirmation, this claim No. 6?

76 A. I cannot answer that question without examining the report. The report will show what papers were sent, what papers were submitted. This plat belongs in this case; it is docketed as file No. 7.

(By Mr. BURKHART:)

Q. When was it filed, Mr. Easley?
A. The index on it is that it was filed in claim No. 30, Hugh Stevenson heirs, Juan Antonio Garcia. I will have to examine the docket in the case to tell you when it was filed.

Mr. CATRON: Objection will be made, not to all of these papers as filed, but to each one separately, to each paper.

(By Mr. FISKE:)

Q. Now, is this Stevens survey a part of the files of your office which were sent to Congress with the report of the surveyor general when he submitted this claim for confirmation?
A. Yes.
Q. Have you a recent survey of that grant made by your office?
A. Yes; a resurvey.
Q. What date was this Archer survey filed in your office?
A. The docket shows it to have been filed on August 6, 1856, with the petition of claimants.

Q. Have you a recent survey of the Hugh Stevenson or Bracito tract made by the Government?

A. Yes, sir.

Q. Please look at your files and see if you have that last survey.

A. *A.* (Producing map.) This is a map prepared from the field-notes of the official survey, of the resurvey as made by the Government, by Deputy Surveyor L. M. Brown, in May, 1893.

(Mr. BURKHART:)

Q. Have you another survey of that grant on the part of the Government?

A. Yes, sir.

Q. By whom was that plat made and from what?

A. The survey of this plat—the field-notes were executed by Elkins and Marmon in 1878.

Q. Are there any more plats of that grant in your office?

77 A. No, sir; I believe not.

Mr. BURKHART: We offer in evidence the plats of the Bracito grant surveyed and made by Steven Archer, surveyor, made in 1854, being plat filed by claimants for the Hugh Stephenson grant for the claim and being file No. 7, reported No. 6, surveyor general's office.

(Which said plat — marked Defendants' Exhibit No. 11.)

Mr. CATRON: Objected to as incompetent, irrelevant, and immaterial, and that no proper foundation has been laid for its introduction.

Admitted subject to the objection.

Mr. BURKHART: We offer in evidence the plat of the Hugh Stevenson grant on the survey made by Elkins and Marmon, U. S. deputy surveyors, in March, 1878.

(Which said plat was marked Defendants' Exhibit No. 12.)

Mr. CATRON: Objected to as incompentent, irrelevant, and immaterial, and that no proper foundation has been laid for its introduction.

Admitted subject to the objection.

Mr. BURKHART: We offer in evidence the plat of the Hugh Stevenson or Bracito tract, surveyed by L. M. Brown, U. S. deputy surveyor, in 1893.

(Which said plat was marked Defendants' Exhibit No. 13.)

Mr. CATRON: Objected to as incompetent, irrelevant, and immaterial, and that no proper foundation has been laid for its introduction.

(No ruling.)

(Mr. BURKHART:)

Q. Do these plats purport to have been made from the field-notes returned and filed in your office?

Mr. CATRON: We object to that as not the best evidence
78 and that no proper foundation has been laid.
(No ruling.)

A. Yes, sir.

Same objection.

Q. Have you the field-notes of the survey in your office?
A. Yes, sir.
Q. Produce them.
A. Here are the field-notes of the Brown survey (Defendants' Exhibit No. 13.)

Mr. BURKHART: We offer in evidence the field-notes of the survey executed by L. M. Brown in 1893, marked Books 1 and 2.
(Which said books were marked Defendants' Exhibits 14 & 15.)
We also offer in evidence the field-notes of the *the* survey of the Hugh Stevenson grant executed by Elkins and Marmon, deputy surveyors.
(Which said book or books should be marked Defendants' Exhibit 16.)
Mr. CATRON: We object to their introduction for the reason that no proper foundation has been laid and that they are not the best evidence.
It is admitted by counsel for petitioners that this claim of Hugh Stevenson or Bracito tract, reported No. 6, has been confirmed by Congress and approved June 21, 1860, and was file 32 as originally reported. (See 12 Statutes at Large, page 132.)
Mr. FISKE: Simply as showing the interests of the parties which I represent, I desire to offer in evidence transcript of the records of the third judicial district, county of Donna Ana, of this Territory, showing the various interests as determined.
Mr. CATRON: I object to it as not being the best evidence.
Mr. FISKE: I offer a certified copy of the records. I don't know any better evidence than that.
79 Mr. CATRON: We object to this proof as improper, irrelevant, and immaterial, and as a matter of fact it is hearsay proof.
(Admitted subject to the objection.)

(Mr. BURKHART:)

Q. Have you in your custody the claim known as the Dona Ana Bend grant and also known as reported to Congress No. 85?
A. Yes, sir.
Q. Produce it please.

(Witness produces papers.)
Mr. BURKHART: We offer in evidence the files of the claim before the surveyor general known as the Dona Ana Bend Colony grant, reported No. 85——

Q. Has it a file number in your office?
A. No. 161.

Mr. BURKHART (continuing): —and known as file No. 161 in the office of the surveyor general, with the report of the surveyor general thereon.

Mr. CATRON: We object to each and every paper as incompetent, irrelevant, impertinent, and immaterial to this case and as not being the best evidence.

Admitted subject to the objection.

Q. Have you in your custody the files of the claim known as the Mesilla Colony grant, as reported number 86?

A. Yes, sir.

Q. Has it a file number in your office?

A. Yes; 162.

Mr. BURKHART (exhibiting papers): We offer in evidence these files, being the files in the claim known as the Misilla Colony grant, reported No. 86, file No. 162, in the office of the surveyor general.

Mr. CATRON: We object to it as incompetent—to each and every paper as incompetent, irrelevant, impertinent, irrelevant, and as mere rubbish, no proper foundation being laid for their introduction, and as not being the best evidence.

(Admitted subject to the objection.)

Q. Have you in your office the papers of the claim known as Santo Tomas de Iturbide, reported No. 139?

A. Yes, sir. (Witness produces papers.)

Q. What is the file number in your office?

A. File 201.

Mr. BURKHART: We offer in evidence the files of the surveyor general's office in the claim known as the Santo Tomas de Iturbide, reported No. 139, file No. 201.

Mr. CATRON: I make the same objection to each and every one of these papers as to those of the Mesilla Colony grant.

(Admitted subject to the objection.)

Q. Have you in your custody the papers files in the claim for the grant known as the Jose Manuel Sanchez Baca, reported to Congress as No. 129?

A. Yes, sir (producing them).

Q. What is the number in your office?

A. File No. 124.

Mr. BURKHART: We offer these papers in evidence (exhibiting them), being the papers on file in the surveyor general's office in the claim known as the Jose Manuel Sanchez Baca, reported No. 129 and file No. 124.

Mr. CATRON: I make the same objection to each and every one of these papers as I did to those of the Mesilla Colony grant.

Q. Has an official survey of the claim known as the Dona Ana Bend grant been made?

A. Yes, sir.

Q. Have you the official plat here?

A. Yes, sir (producing it).
Q. By whom was it made?
A. Made by Elkins and Marmon in March, 1878.

Mr. BURKHART: We offer in evidence the official plat of
81 the survey of the grant known as the Dona Ana Bend Colony, by Elkins and Marmon, deputy surveyors, in March, 1878, and I also offer the field-notes of said survey.

Mr. CATRON: I object to it as incompetent, irrelevant, immaterial, and impertinent; that no proper foundation has been laid for their admission in evidence and as not the best evidence.

(Admitted subject to the objection.)

Q. Has there been an official survey of the Mesilla Colony grant, known as reported No. 86?
A. Yes, sir.
Q. Please produce the plat.
A. I have a plat (producing one) made by Elkins and Marmon, United States deputy surveyors, made in March, 1878.

Mr. BURKHART: We introduce in evidence the field-notes and plat of the survey of the Mesilla Colony grant, made by Elkins and Marmon, U. S. deputy surveyors, in March, 1878.

Mr. CATRON: I object to its introduction for the same reasons as stated in my objection to the introduction of the plat in the Dona Ana Bend Colony case.

(Admitted subject to the objection.)

Q. Has there been an official survey of the Santo Tomas de Iturbide, reported No. 139?
A. No, sir.
Q. Has there been a survey made of the Jose Manuel Sanchez Baca grant, reported No. 129?
A. Yes, sir (producing plat).

Mr. BURKHART: We offer in evidence the field-notes and plat of the survey made of the Jose Manuel Sanchez Baca grant by John Shaw, U. S. deputy surveyor, in April, 1883.

Mr. CATRON: I object to its introduction for the same reasons as stated in my objection to the introduction of the plat in the Dona Ana Bend case.

(Admitted subject to the objection.)

82 Q. Mr. Easley, these plats which have been introduced are plats which have been made in your office and were official plats prepared and made from the field-notes made by deputy surveyors that are on file in the records of your office?
A. Yes, sir.

Mr. CATRON: I object to it as not being the best evidence.

Q. And the field-notes which we have introduced were the field-notes which have been returned by the respective deputy surveyors who made them, and they so remain in your office?
A. Yes, sir.

Mr. CATRON: I don't know whether the objections made are as full as I would like to make them, and I would like to have an objection go in to all of these papers, each and every one of the papers, documents, field-notes, and plats which have been introduced in these various grants, because they are incompetent and immaterial, impertinent and irrelevant; that no proper foundation has been laid; that because they are not the best evidence.

Q. What is that paper (Mr. Burkhart exhibiting paper to witness)?

A. It purports to be a royal decree and belongs among the archives in my office as archive No. 1107 (already offered by the defendants as Exhibit No. 5).

(BURKHART:)

Q. Mr. Easley, from the official surveys in your office, do you know where the head of the Bracito ditch is located, upon the Rio Grande river, about thirty miles north of El Paso?

A. I know the location with reference to the lines of the public surveys.

Q. Yes.

A. I can determine its location by an examination of the plats of the survey of the Hugh Stevenson grant and surrounding surveys.

Q. Do you know where it is with reference to the public surveys?

A. Yes, sir; I know where it is shown to be by the official
83 maps and returns in my office.

Q. Have the public surveys been extended over the lands within a distance of six and a half miles on each side of the Bracito ditch as located on the official surveys?

A. They have.

Mr. CATRON: That is objected to as not being the best evidence.

Q. What townships are included within six and a half miles on each side of the head of the Bracito ditch—north, south, east, and west?

A. Township 22, townships (interrupted)——

Mr. CATRON: We object to this as impertinent, irrelevant, immaterial, and as an improper way to prove such facts.

A. (Continuing:) Possibly none of township 22 south; townships 23, 24, 25 south, ranges 1, 2, and 3 east; part of range 1, all of range 2, and part of range 3.

Q. What part of range 1?

A. The eastern part; about the eastern four miles along the eastern side; about two-thirds along the eastern side.

Q. Within six and a half miles?

A. Yes, sir; six and a half miles would be the centre of range 1 going west.

Mr. CATRON: We understand that our objection goes to all of this testimony with reference to the location of the Bracito ditch or acequia.

Q. What section or township is at the head of the Bracito ditch?

A. Upon a close examination of this map it appears to be on the southern edge of section 4, township 24 south, range 2 east, and nearly on a line between sections 4 and 9, according to the connection shown on this map.

Q. Is it on the northern boundary of the Hugh Stevenson grant as shown on that plat?

A. Yes, sir; it is.

Q. Have you the plats of townships 23, 24, and 25, ranges 1, 2, and 3 east?

84 A. Yes, sir.

Q. Produce them, please.

A. (Witness produces nine plats.)

Q. Do these plats show how much of the land within a distance of six and a half miles on each side of the head of the Bracito ditch—north, south, east, and west—has been surveyed under the public land laws and how much has been surveyed under claims of land grants?

A. I think they do. I have not examined them as to whether or not the connections have all been made with the grant boundaries.

Q. Have all the lands within that distance of the head of the Bracito ditch been surveyed either under public surveys or private land surveys?

A. Yes, sir.

Q. When were those public surveys made? When did they commence and when was the last one made?

A. The oldest survey seems to have been the survey of township 25 south, range 1 east; that was surveyed in November, 1858; and 25 south, 2 east and 3 east, were each surveyed in 1881. Township 24 south, ranges 1 and 3 east, were surveyed in 1881; township 24 south, range 2 east, was surveyed in 1885; township 23 south, ranges 1, 2, and 3 east, was surveyed in 1885.

Cross-examination by Mr. CATRON:

Q. Have you in your possession as the surveyor general of the Territory of New Mexico the original archives of the Juan Heath Grant case?

A. Yes, sir.

Q. What is the archive number of them?

A. No. 410.

Q. That is an original paper in your archives, and it has been there ever since your office has been created?

A. It is an original paper, I think, from the number that it bears.

85 Q. It is one of the original papers which was turned over to the first surveyor general by the keeper of the Mexican archives; it was not filed in the surveyor general's office?

A. It is an original archive.

Re-examination by Mr. BURKHART:

Q. Mr. Easley, the Hugh Stevenson grant, reported No. 6; the Dona Ana Bend grant, reported No. 85; the Mesilla Colony grant, reported No. 86; the Santo Tomas de Iturbide, reported No. 139, and the Jose Manuel Sanchez Baca grant, reported No. 129, are they within a tract of land having for its centre the head of the Bracito ditch, as shown in the official surveys, and extending six and one-half miles in each direction—north, south, east, and west—from the head of the Bracito ditch, are they within this tract, as shown by the official surveys, either in whole or in part?

A. Yes, sir; I think so.

Recross-examination by Mr. CATRON:

We offer in evidence on behalf of claimants all of the papers in that archive (meaning, presumably, archive 410, which, however, is introduced elsewhere and identified. Ex. V).

Q. Mr. Easley, these five or six grants which you have testified about, outside of the Hugh Stevenson grant, have they ever been confirmed by Congress?

It is admitted by counsel for respondants that none of the grants referred to, save the Hugh Stevenson, have been confirmed by act of Congress.

Mr. CATRON: Do you admit also that there is an application before this court now for their confirmation? It is a fact that there is an application pending before this court for the confirma-
86 tion of each of those grants introduced in evidence, except the Hugh Stevenson claim, which has been confirmed by the Congress of the United States.

The admission was made by counsel for respondants.

Mr. CATRON: I would like to have it admitted also that the Government disputes the validity of every one of these claims.

Mr. BURKHART: It is admitted by the Government's answer that it denies the validity of every claim we have introduced here except the Hugh Stevenson.

Mr. CATRON: Then I move to strike it all out. They can't come in with a claim which they deny the validity of and use it to dispute another claim.

(No ruling.)

Mr. NEWCOMB: I wish to introduce the original grant in the Dona Ana Bend case and I will account for its possession. This is the original and has been in the possession of the Dona Ana Bend colony ever since it was made until it was filed in this court.

(Which said document was marked Exhibit "A" for respondants The Dona Ana Bend Colony.)

Mr. CATRON: Object to it as incompetent, impertinent, and immaterial. No proper foundation has been laid for its introduction. It is not the best evidence.

PALBO MELENDEZ, introduced and sworn as a witness on behalf of the respondants, testified as follows:

On examination by Mr. NEWCOMB:

Q. State your name, age, and residence.
A. My name is Pablo Melendez, I am fifty-nine years old, and live at Donna Ana.
87 Q. How long have you lived there?
A. Ever since the year '43.
Q. What official position, if any, do you hold in the county of Donna Ana now?
A. I am probate judge of the county of Donna Ana.
Q. Are you one of the sons of Pablo Melendres, who was one of the original settlers of the Dona Ana colony?

Mr. CATRON: I object to the form of the question.
(No ruling.)

A. Yes, sir.
Q. What position did your father hold in the colony?

Mr. CATRON: Objected to, as no proper foundation has been laid.
(No ruling.)

A. He was justice of the peace and commissioner to apportion the lands.
Q. Look at that document (handing witness document).
Q. What is that?
A. It is the Dona Ana Bend grant.
Q. In whose possession has it been to your knowledge?
A. In the possession of my father and afterwards in my possession, after he died.
Q. Up to what time was it in your possession?
A. I think it was up to time I delivered it to Mr. Newcomb.
Q. And you delivered it to him to file in this court?
A. Yes, sir.
Q. How did you first come to the colony?
A. I went with my father's family.
Q. You were quite small then?
A. Yes, sir.
Q. Where have you resided ever since?
A. In Donna Ana.
Q. I understood you to say yuour father was one of the commissioners to divide the lands.
A. Yes, sir.
Q. Is his writing in there (referring to the original grant to Donna Ana)?
A. Yes, sir.
Q. This original document has been in your father's and your possession ever since it was issued to the colony?
A. Yes, sir.

88 Mr. NEWCOMB: We reoffer this in evidence.

(Referring to Exhibit "A" for the Dona Ana Bend colony, heretofore identified.)

Mr. CATRON: I object to all of the papers as irrelevant and immaterial, as not the best evidence, and that no foundation has been laid.

JOHN D. BRYAN, a witness called and sworn on behalf of the respondants, testified as follows:

On examination by Mr. NEWCOMB:

Q. What is your name and residence?

A. John D. Bryan. I reside at Las Cruces.

Q. What official position, if any, do you occupy?

A. I am register of the United States land office in that district.

Q. Are townships 23, 24, and 25 south, ranges 1, 2, and 3 east, in your land district?

A. Yes, sir.

Q. Have you in your custody, as such officer, plats of townships 23, 24, and 25, ranges 1, 2, and 3 east?

A. Yes, sir; I have them.

Mr. NEWCOMB (after consultation): To save time, Mr. Bryan, will you please make out and properly certify an abstract of all the entries made under the public land laws of the United States in townships 23, 24, and 25, in ranges 1, 2, and 3 east, in order that it may be filed and considered as a part of the evidence for respondants in this case?

A. Yes, sir.

Mr. CATRON: I have no objection to that, but I wish to enter an objection to this testimony and abstract as irrelevant and immaterial.

WILL M. TIPTON, a witness called and sworn on behalf of the respondants, testified as follows:

89 On examination by Mr. BURKHART:

Q. What is your name and residence?

A. My name is Will M. Tipton, and my residence is Santa Fé, New Mexico.

Q. Do you understand the Spanish language, Mr. Tipton?

A. Yes, sir.

Q. What has been your experience in the study of the Spanish language—what experience have you had?

A. Experience extending over some nineteen years; during my connection with the office of surveyor general for the greater portion of sixteen years; since then in the position which I now occupy, as special agent for the court of private land claims detailed for duty in the office of the United States attorney for that court.

Q. Look at this paper (handing witness paper containing articles 2 and 4 of the law of January 4th, 1823) and state whether or not

the translation contained therein is a correct translation of the Spanish there written and if you made the translation.

A. That portion of this document described as article 2 I think I translated, but the word "executive" I do not recollect having translated.

Q. Is that translation correct of this article?

A. Yes, sir (examining). I don't think it is in one respect.

Q. What is the correct translation of it?

A. I would leave out the words "to them" if I were translating it, according to the Spanish as here written; there may be something in the text which would justify it, but I see nothing here in this article.

Q. Examine this document, archive No. 1107, introduced as Defendants' Exhibit No. 5, and translate the second article and change the printed translation to conform to it.

A. "Art. 2. In order to facilitate their settlement the governor will distribute lands under the conditions and in the terms that shall be expressed."

90 Q. Now, Mr. Tipton will you please look at article 4 of the Iturbide law (of January 4th, 1823), introduced as Defendants' Exhibit No. 5, and state whether you made the translation contained in this paper and marked Defendants' Exhibit No. 6?

A. I would like to see the text from which I made that translation. (After examining:) The word "lands," which appears in next to the last line, I have changed to "land," to agree with the original. In other respects I believe the translation is correct.

Mr. BURKHART: I now offer in evidence Defendants' Exhibit No. 5 as corrected by witness W. M. Tipton and the translations of articles 2 and 4 of the law of January 4, 1823.

(Which said translations of articles 2 and 4 of said law were marked Defendants' Exhibit No. 6.)

HENRY O. FLIPPER, a witness called and sworn on behalf of the respondants, testified as follows:

Examination by Mr. BURKHART:

Q. What is your name?

A. Henry O. Flipper.

Q. Do you understand the Spanish language?

A. I do.

Q. What experience have you had in the study of Spanish?

A. I studied Spanish at the United States Military Academy at West Point, beginning in 1874, and have been a student of it ever since, with twelve years' experience in the survey of public lands in Mexico, and have had to use the language all the time in that work.

Q. Archive 410 introduced in evidence here—have you made a translation of that document?

A. I have, sir.

Q. Is the translation contained in this printed document (refer-

ring to printed document filed in case No. 59 and contain- Defendants'
91 fendants' Exhibits 2, 4, 5, 6, 7, 8, and 9) the translation which you have made?

A. Yes, sir. The translation of this document (referring to archive 410) made by me begins on page seven and the second one on page 26 (referring to Defendants' Exhibits 9 and 2 respectively in the printed document last referred to).

Q. This translation is correct?

A. Yes, sir.

Q. Now, Mr. Flipper, will you look at page 176 of the "Codigo de Colonizacion y Terrenos Baldios," published in the city of Mexico in 1893, and state whether or not you have translated the law on that page numbered 47?

A. I have translated that law.

Q. Is the translation contained in Defendants' Exhibit No. 8 made by you?

A. Yes, sir; it is the translation made by me.

Q. Is it correct or not?

A. It is correct.

Q. Mr. Flipper, look at page 634 of volume 1 of "Legislacion Mexicano," printed in Mexico in 1876, No. 321 on said page, and state whether or not you have made a translation of the same.

A. I have, sir.

Q. Look at paper marked Defendants' Exhibit No. 7 and state whether or not that is a correct translation of articles 1 and 2 of that law and whether it was made by you.

A. Yes, sir; that translation was made by me, and it is correct.

Cross-examination by Mr. CATRON:

Q. You don't make any mistakes in translations, do you, Mr. Flipper?

A. Sometimes I do.

WILL. M. TIPTON, witness, recalled.

Mr. BURKHART:

Q. Mr. Tipton, examine this paper marked Defendants'
92 Exhibit No. 3 and state whether or not you have made a translation of the same.

A. Yes, sir; I have.

Q. Is that the translation made by you; and, if so, is it correct?

A. It is the translation which I made of such portions of the document handed me as were in Spanish—the latter part of the document was in English—and I believe it to be correct.

Q. That is marked Defendants' Exhibit No. 4, is it, Mr. Tipton?

A. The translation—yes, sir.

Mr. SPRINGER: I believe that is all the documentary proof we have to offer except the list of entries by the register of the land

office, and he may not get that finished this afternoon, but we will file that as soon as it is completed.

Mr. CATRON: This paper—No. 4—which has been introduced by Mr. Tipton, we wish to save an objection to it and all of this testimony which has been introduced.

PEDRO MELENUDO, a witness called and sworn on behalf of the respondants, testified through the medium of the official interpreter as follows:

Examination by Mr. NEWCOMB:

Q. What is your name?
A. Pedro Melenudo.
Q. Where do you reside?
A. Las Cruces, New Mexico.
Q. What is your age?
A. I was born in the year '10.
Q. You mean 1810?
A. Yes.
Q. Where were you born?
A. In El Paso.
Q. In El Paso, Mexico?
A. Yes, sir.
Q. How long have you lived in New Mexico?
A. Since the year '42.
Q. Where did you first come in New Mexico?
93 A. There to the Dona Ana grant.
Q. Have you lived in that vicinity ever since?
A. Yes, sir; I was working when they made the ditch; I helped to make the ditch.
Q. Do you know a tract called the Bracito?
A. Yes, sir.
Q. Did you ever live upon that tract of land at any time?
A. Yes, sir; I was there for the space of three months. When they run Don Antonio Garcia from there I was there with my father, herding some sheep.
Q. About how old were you when you first went with your father?
A. I might have been fourteen years old.
Q. Can you remember anywheres near the year?
A. I think it was in the year 1822.
Q. Now, you say you and your father went there working for whom?
A. Don (or Juan) Antonio Garcia.
Q. Where was he at that time?
A. He used to go there to the ranch.
Q. Whereabouts was this ranch you have described; how far from El Paso?
A. It was here below the place of the boundary line of the Dona Ana grant; somewhat below.

Q. What was there there to make that place where he says the lands of Dona Ana extended; was there anything there?
A. A place by which the river passes.
Q. Was there anything taken out from there; any acequia?

Mr. CATRON: I object to the question as leading.
Question withdrawn.

Q. Had Garcia done anything there at that place in the way of improvements of any kind?
A. Just the ranch; he only had a ranch there.
Q. Any water taken out from there; any streams?

Objected to as leading. Overruled.

94 A. No.
Q. Was there any ditch there?

Objected to as leading. Overruled.

A. There was none at that time; no ditch.
Q. Does he know anything of a ditch on the Bracito tract at any time?
A. No, sir; at the place called Canoncito there was a ditch taken out by Antonio Bunavides and others.
Q. When was that?
A. About the year 1814.
Q. When you were on the ranch there you say you were herding animals?
A. Yes, sir.
Q. Did you go there to live?
A. No; because the Indians were causing us a great deal of harm; the Indians made a great deal of trouble at that time.
Q. After the Indians drove you away where did you go to?
A. I came to the grant of Dona Ana.
Q. You say you went to the grant of Dona Ana in 1842?
A. I say about.
Q. From the time you were born up to 1842, with the exception of the three months you lived on the Garcia ranch, where did you live?
A. In El Paso, Mexico.
Q. Now, during the time you lived in El Paso, Mexico, at any time did any number of people, of Americans, come to that place or up to the Bracito grant, during any of those years?

Mr. CATRON: We object; no proper foundation has been laid for such a question.
By the COURT: He may ask it. Objection overruled.

A. I did not see any; I did not know anybody but the Americans who lived in El Paso, and they were known people.
Q. Then do I understand you to say that there was no colony of Americans ever come to El Paso and up to the Bracito tract of land at any time that you lived in El Paso?

Mr. CATRON: Objected to, no foundation having been
95 laid, and as incompetent and leading.
Overruled.

A. There were none; no, sir.

Q. Now, in 1825 or 1825 did any colony of Americans come to El Paso and bring with them machinery and implements of husbandry and all that kind of things? Did they come to El Paso or go to the Bracito?

A. There was no such colony there.

Mr. CATRON: We object to this; there has been no foundation laid for such testimony.

Objection overruled.

Q. There was no such colony there?

A. No, sir; I saw no families at the time when I used to travel up to the colony of Dona Ana.

Q. Now, I am talking about the time when you lived upon the Bracito tract with your father; now answer the question, Did any colony of Americans come there with machinery or implements of husbandry?

Mr. CATRON: Objected to for the same reasons as the last question.

Objection overruled.

A. No, sir; I saw no one.

Q. (To the interpreter:) You don't put the question as I ask it. Ask him whether he ever saw any such colony of American people come to the rancho on the Bracito tract during the years '22, '23, '24, or '25.

A. No, sir.

Q. Did you ever hear during those times talk about people or any such colony having ever been in that country?

A. There was no other grant except Dona Ana.

Q. Did you ever hear amongst the people when you lived there of a colony of American people going there during those years from the United States?

96 A. No, sir; we did not know of any of those persons coming in there.

Q. Never heard of any colony coming there?

A. In 1846 many Americans come in.

Q. Before 1846 did you ever hear of any number of Americans coming into the country?

A. No, sir.

Q. Before 1846 do you know how many Americans were down in that country, about, at El Paso, Bracito, and all around?

A. There were only three in El Paso.

Q. Before the settlement of Dona Ana, in 1842, were there any people living between El Paso and the Dona Ana settlement; and, if so, how many?

A. No, sir; only a man named Benevides, who had a wooden house.

Q. Where was that house of Benevides?
A. It was right at Canontio.
Q. Were there any Americans living in that country from Dona Ana to El Paso—any Americans living there during the years '23, '24, '25?
A. No, sir; only those three; Mr. Stevens was one of them.
Q. Did you know the others?
A. There was Don Jose and the other was Mr. Mike.

Cross-examination by Mr. CATRON:

Q. You say you were born in El Paso?
A. Yes, sir.
Q. On which side of the river?
A El Paso, Mexico.
Q. What was Don Jose's name, if he had any other?
A. He was called Don Jose only.
Q. Any relation to Mr. Stevenson?
A. Yes, sir.
Q. What relation?
A. I believe he was married to a cousin of his.
Q. Did you know a man down there by the name of Carleau?
97 A. No, sir; I did not know him.
Q. Did you know a man there by the name of Duncan?
A. No, sir.
Q. Were you acquainted with the wife of Horace Stevenson?
A. The wife of Esteban Stevenson?
Q. Horatio Stevenson.
A. Yes, sir.
Q. You knew her?
A. Yes, sir; very well.
Q. Did you know her father?
A. Yes, sir. He was Don Esteban Stevenson.
Q. Did you know Price Cooper?
A. No, sir.
Q. Where did you live in the year 1825?
A. El Paso.
Q. Where did you live in the year 1835?
A. El Paso.
Q. Where did you live in the year 1845?
A. Donna Ana.
Q. You say that you herded sheep in 1822, and that the Indians run you off?
A. Herded cows.
Q. And the Indians run you off?
A. Yes, sir; they drove off all of us.
Q. And stole the stock?
A. Yes, sir; and drove them off.
Q. How many people did you have on that ranch when you were herding those cattle?

A. Myself, my father, Juan Ortega.
Q. And you say when the Indians run you off you went upon the Dona Ana grant?
A. Yes, sir.
Q. Who was living at Donna Ana after the Indians run you off?
A. Don Pablo Melendres, Jose Maria Portales, Gregorio Portales.
Q. Is Don Pablo Melendres the one that is here now?
A. No, sir; his father.
Q. Did you ever know his father?
A. Yes, sir.
Q. You say at the time the Indians run you off you went to his ranch with your father?
A. Yes, sir.
Q. You were on this Bracito tract but one time, and that
98 was for three months, was it?
A. Yes, sir.
Q. Now, after the Indians run you off with your cattle and you went to Donna Ana, how long did you stay there?

Mr. NEWCOMB: I object to the question. The witness did not say that, and he is misleading the witness.
Objection overruled.

A. All the time until we dug a portion of the ditch.
Q. And you have been there practically up to this time, have you?
A. Yes, sir.
Q. Where were you when the American troops passed by Donna Ana the first time?
A. There in Donna Ana, because Don Pablo was ordered to assemble all the people there by the man Mr. Thomas, and about eight o'clock we all assembled and took the oath of allegience to the United States.
Q. How long had there been a Mexican garrison at Donna Ana?
A. For about three or four months.
Q. Are you acquainted with Horace Stevenson, of Donna Ana county?
A. Yes, sir. I knew his father.
Q. How old was Horace Stevenson when you went away from El Paso?
A. He might have been four years old.
Q. Do you know how old he is now?
A. No, sir.
Q. Is he as old as Judge Newcomb?
A. I think so.
Q. Did you know Henry Curleau?
A. No, sir.
Q. Did you know a man down there by the name of Blanchard?
A. I did not know him.
Q. Did you know Henry Gig?
A. No. I knew Luis Guique.
Q. When did you first know him?

A. There in Donna Ana, when a detachment of troops was sent there.

Q. Where were you when the battle took place between the American and Mexican troops at Bracito?

A. At Donna Ana.

99 Q. Were you a married man then?

A. Yes, sir.

Q. Where did you marry?

A. El Paso.

Q. How long had you been married at that time—when the battle took place at Bracito between the Americans and Mexicans?

A. It might have been four years.

Q. Who did you marry?

A. A widow woman.

Q. What was her name?

A. Manuela Hidalgo.

Q. How old was she when you married her?

A. 18.

Q. In what year did you marry?

A. '41.

Q. How old was you when you married?

A. 30.

Q. Have you any children?

A. I have one very old; fifty-three years old.

Q. How many children did you have?

A. 10.

Q. Gregorio Herrera. Did you know him?

A. I knew him.

Q. Is he living or dead?

A. I think he is living.

Q. How long since you were in El Paso?

A. It is twenty years. I have not gone to El Paso.

Q. How many times have you been to El Paso since you went to Donna Ana to live?

—. I went there many times, bringing provisions for my family.

Q. About the year- 1822, '23, '24, when you were herding those cattle and for a few years thereafter, the Indians were very bad along there, were they not?

A. Yes, sir; they even carried people off and killed stock.

Q. People then didn't travel much back and forth, did they, from El Paso to Donna Ana?

A. Only in parties of ten or twelve or more.

Q. It was very rare if anybody went along there then?

A. No, sir; there used to be nobody that went along there that was not killed by the Indians.

100 Q. Didn't dare go alone?

A. No, sir. We used to pass through with the carts (caretas) in parties of 10 or 12.

Q. What was the first time you went by the Bracito, on which you had your ranch, after the Indians run you off?

A. I think I went by in '46 or '48.

Q. That was the first time after the Indians run you off?
A. Yes, sir.

Re-examination by Mr. NEWCOMB:

Q. When you say the Indians run you off what place do you refer to?
A. El Paso.
Q. They run you down to El Paso?
A. Yes, sir.
Q. How long did you remain there before you went away?
A. In El Paso?
Q. Yes.
A. Until the time they commenced to take steps to place the Dona Ana grant.
Q. That was the first time you left El Paso after the Indians run you off?
A. Yes, sir.
Q. Do you remember anything about Emperor Iturbide?
A. Yes.
Q. Do you remember when the——

Mr. CATRON: Wait, now. Do you want to testify for him? If so, ask the court to allow you.
The COURT: Proceed.

Q. Do you remember when he was dethroned?
A. Yes, sir.
Q. Where were you then?
A. El Paso.
Q. How many Americans were there then?
A. There were none then except Don Esteban Stevenson.
Q. Do you remember the revolution when Mexican got her independence?
A. I do remember.
Q. Do you remember when the Spaniards left?

101 Mr. CATRON: I object. He has not said there were any Spaniards around there.
Objection overruled.

A. Yes, sir; I remember, because there were some Spaniards that remained there.
Q. How many?
A. Don Francisco Valverde, Alex. Ramirez, Juan Gil, called Moyete, and also Don Pilar Laso.
Q. That was about all the Spaniards that were left when the others went away?
A. Yes, sir.
Q. You say you remember when Iturbide was deposed?
A. Yes.
Q. When had you been living the three months on the Garcia ranch, before or after that?

Mr. CATRON: Objected to as leading.
Overruled.

A. I had not been living at the ranch. I was at El Paso still.

Recross-examination—Mr. CATRON:

Q. Where were you when Hidalgo was killed?
A. El Paso.
Q. You remember that very*b* well, do you?
A. Yes, sir.
Q. About how old were you at that time?
A. About six years.
Q. Do you remember it very distinctly when Hidalgo was killed?
A. I remember it very well.
Q. Who else was killed at the same time?
A. I do not remember any other now.
Q. Where was Hidalgo killed?
A. Here towards Mexico.
Q. Towards El Paso or towards Santa Fé?
A. Towards Chihuahua.
Q. At the time you say you were herding cattle was there any Stevenson living in El Paso?
A. He was living in El Paso.
Q. Don't you know that Mr. Stevenson went to El Paso to live in 1828?
A. I don't think so. He was there, married.
Q. It was about five or six years after Iturbide was killed that you were herding sheep there, was it not?
A. Yes, sir.
Q. That's all.

Court adjourned until tomorrow at 10 o'clock.

102 THURSDAY MORNING, *June 20th*, 1895, at 10 o'clock a. m.

Court met pursuant to adjournment.
In this cause the following proceedings were had:

SAMUEL G. BEAL, a witness called and sworn on behalf of the respondants, testified as follows:

Examination by Mr. NEWCOMB:

Q. What is your name?
A. Samuel G. Beal.
Q. Where do you reside and what is your age.
A. Las Cruces; I am seventy-five years old.
Q. When did you first come to this country?
A. I came first to Santa Fé in 1846, and I next went down in the southern part of the Territory with Col. Daffries' regiment.
Q. Where did you go to? In what part of the country did you go?
A. To Mexico and Chihuahua.

Q. Between here and Chihuahua did you have any battles?
A. We had the first battle about ten miles below old Fort Fillamore, Donna Ana county, at what is called the Bracito ranch, or Partido de Bracito is what it is known by.
Q. About how long were you in El Paso?
A. Forty days.
Q. During that time did you see or become acquainted with any American residents in that section, if there were any?
A. I believe I saw Americans around there.
Q. How many?
A. Very few.
Q. Those that you saw there, do you remember any of them?
A. There were so few there when I first went there in 1846 that I can't recall the names of any of them.
Q. When did you come back from Mexico?
A. We didn't come back that way. We went to New Orleans and were discharged there.
Q. When did you next go down to El Paso?
A. In 1848.
Q. Have you lived in this country ever since?
A. Off and on.
103 Q. Have you at any time held any position in the county of Donna Ana?
A. I have been sheriff of Donna Ana county.
Q. About what years?
A. From '53 to '61—eight years.
Q. Are you well acquainted with the people of that country and vicinity in the county of Donna Ana?
A. I used to know them all—very nearly all.
Q. Did you know a man by the name of Cooper?
A. I did know Price Cooper.
Q. When did you first become acquainted with him?
—. The first time I recollect seeing Price Cooper was when he was living in a house on what is called the Canontio ranch down there, about fifteen to eighteen miles above the present town of El Paso. It was Bonee's ranch then.
Q. You say eighteen miles this side of El Paso?
A. Somewhere along there; 12, 15, 18 miles.
Q. What was he doing there?
A. Held that land for McDuffy.
Q. About what year was that?
A. '48 or '49.
Q. Now describe about how old Price Cooper was at that time.

Mr. CATRON: Objected to as hearsay and incompetent.
Objection overruled.

A. Price Cooper looked rather boyish to me at that time—rather boyish appearance, and I considered him younger than myself.

Mr. CATRON: Objected to as incompetent and irrelevant and not the proper way to prove such facts.

Q. Can you describe his looks at that time as to appearance?

Mr. CATRON: Objected to for the same reasons.
Admitted subject to the objection.

A. He was a fellow of small statute and boyish appearance. That is about *is* description.

Q. Do you know how long he lived upon that ranch?

A. I don't remember; good many years he lived there, but he was driving a stage afterwards, El Paso to Santa Fé.

104 Q. When was that?

A. Along in the '50's—the early '50's.

Q. Do you own any property down in the Mesilla valley there?

A. Yes, sir.

Q. About '48 or '49 what condition was that country in as to people being able to travel through?

A. The Indians were dangerous—all the time dangerous.

Q. How did people travel when they made big journeys?

A. The Mexicans use to travel, by twenties and armed, from the town of Dona Ana to El Paso.

Mr. CESSNA: Objected to as incompetent, irrelevant, and immaterial.
Objection overruled.

Q. State what settlements there were in that country at that time.

A. There were no settlements from the town of Dona Ana to a place called Ponee's ranches then, and from there to El Paso—no settlements except one, and that was in '48 and '49, and in '46 there was none. There was one house eight miles above built by a man names White—above El Paso.

Q. Were there any public conveyances running at those times? 1846 I am talking about.

Mr. CATRON: Objected to for the same reasons. Witness has not shown any capacity to testify on that subject. He went down there in 1846 with soldiers. It is impossible for him to have known the condition or conveniences of the country.
Objection overruled.

A. The stage line started after the line between the United States and Mexico was surveyed.

Q. Mr. Beal, did you ever hear from the time you have come to that country until now, from the inhabitants or anybody, of any such grant as Juan Heath grant in that country?

Mr. CATRON: Objected — for the same reasons.

105 Objection overruled.

A. I never heard of that grant until 4 or 5 years ago, I think; before that time I never heard of it.

Q. You never heard it talked about by any of the inhabitants?

Mr. CATRON: Objected to as leading.
Question withdrawn.

Q. What was there known there as to the title to that land? Were there any grants issued by the Mexican government for that land at that time?

Mr. CATRON: We object. That is not the best evidence.
Objection sustained.

Q. Mr. Beal, did you ever hear from the inhabitants of that section of the country anything of a colony of Americans having come to that country in 1824—fifty or a hundred of them?

Mr. CATRON: Objected to as incompetent, irrelevant and immaterial, and as hearsay.
Objection overruled.

A. No, sir.
Q. If such a colony had come down there, it would have been known by the whole country there?

Mr. CATRON: It occurs to me that the judge is making himself a witness. I object to the question as leading.
Objection sustained.

Cross-examination—Mr. CATRON:

Q. Where is Canontio from the Bracito tract of land—from the place where you had the battle?
A. That country has been changed down there some. I will have to calculate the distance from Las Cruces and deduct——
Q. You say Canontio is about ten miles above El Paso?
—. ——.
Q. Ft. Fillamore is about how far from Las Cruces?
A. About six miles.
106 Q. You say the battle was about ten or twelve miles below Fort Fillamore?
A. Yes, sir.
Q. That would make it six or eight miles below Las Cruces?
A. Yes, sir; I am not good at measuring, myself.
Q. I understand you are giving it to the best of your knowledge?
A. I should say it is about that distance, more or less.
Q. About forty-eight or fifty miles from Las Cruces to El Paso, isn't it?
A. We all call it fifty miles; I believe the railroad makes it less than that.
Q. That would make it sixteen or eighteen miles from the battle ground to Canontio, wouldn't it?
A. Not that much.
Q. About how much, then?
A. What's the question?
Q. (Question repeated and Mr. Catron added:) From El Bracito to Canontio.
A. Yes, sir; about that.
Q. How long did you say you stayed in El Paso after reaching there on the raid down to Mexico?

A. I think we stayed about forty days.
Q. How many men did you have?
A. Seventy-eight hundred officers and men.
Q. That was rather an unusual thing, your going down there on that occasion?
A. Yes, sir.
Q. Attracted considerable attention?
A. From whom?
Q. From the people generally.
A. We might have attracted some attention.
Q. You were on the lookout for the enemy all the time, were you?
A. Yes, sir; we were looking for them.
Q. You had pretty strict discipline around there?
A. Yes, sir.
Q. What did you do in El Paso?
A. Took quarters there.
Q. The soldiers were pretty generally kept in quarters?
A. Yes, sir; we had camp guards and picket guards out.

107 HENRY J. CUNILLE, a witness called and sworn on behalf of the respondants, testified as follows:

Examination by Mr. NEWCOMB:

Q Where do you reside?
A. Las Cruces.
Q. What is your age?
A. I will be sixty-nine years in August.
Q. What positions, if any, have you held in the county of Donna Ana?
A. I have been assessor, sheriff, and probate judge.
Q. When did you first come to this country?
A. In 1845.
Q. To what place did you come?
A. Santa Fé.
Q. How long did you live here?
A. I stayed here until spring and then went back, and kept going back and forth.
Q. When did you go down to the lower country?
A. I went down there in the winter of 1847.
Q. Did you become well acquainted with the people down in that section of the country?
A. I did.
Q. At that time were there any Americans down there?
A. Yes.
Q. Can you name them?
A. In the vicinity of Donna Ana.
Q. Yes, and El Paso.
A. Well, there was Frank Fletcher, Henry Curleau, Lucas Curleau, Jim Buchanan——

Mr. CATRON: This is all objected to as immaterial and irrelevant and as having no bearing whatever on the case, and we wish all that character of testimony to be considered as objected to.

No ruling.

Q. Did you become acquainted with all of the Americans living down there?

A. I think I did.

Q. You have lived in that country ever since?

A. Off and on; yes, sir.

Q. That has been your residence?

A. Yes, sir.

Q. Did you know one Price Cooper?

A. I did.

108 Q. When did you first know him?

A. Well, it was about '50, beginning in '50. He was driving a mule wagon from Santa Fé to San Antonio.

Q. Did you ever hear of him in that country in 1847 when you went there in 1847?

Mr. CATRON: Objected to, as no foundation has been laid.

A. In the winter of 1847 I was in Donna Ana.

Q. What I asked you was whether you have ever heard of him being there before 1850.

Mr. CATRON: Objected to as incompetent and immaterial.

A. I might have heard of him, but I didn't see him until he was driving a mule team from Santa Fé to San Antonio.

Q. How old a man was he at that time?

Mr. CATRON: Objected to as incompetent.

A. He was a little older than I was; probably three or four years.

Q. What was his appearance as to age?

A. He was a red-faced, round, healthy-looking young man.

Q. When did you see him last?

A. I have not seen him for about eleven years.

Q. You say he was a man three or four years older than yourself?

A. Yes, sir; not more than five.

Mr. CATRON: Objected to as incompetent and as no foundation has been laid.

Q. You have purchased land in the Mesilla valley and dealt in that somewhat?

A. Yes, sir.

Q. Did you ever hear of a grant in that section of the country called John Heath or Juan Gid grant?

Mr. CATRON: That is objected to as incompetent and immaterial.

No ruling.

109 A. I have heard it in the newspapers in the last four or five years.

Q. Before that did you ever hear it talked about in that community by the old people?

A. No, sir.

Mr. CATRON: Objected to as incompetent and immaterial and hearsay.

No ruling.

Q. Did you ever hear of anybody there claiming lands under that title?

Mr. CATRON: Same objection as to the last question.

No ruling.

A. No, sir.

Q. Did you ever hear from the old inhabitants or any one else of a colony of Americans ever coming to the Bracito or El Paso along in '20's, '22, '3, or '4?

A. No, sir; I never heard of it.

Mr. CATRON: Same objection.

No ruling.

Q. What was the condition of the country when you first went there as to safety of travel and communication?

A. Wild.

Q. How did people travel in those days?

A. Got together and traveled in that way.

Cross-examination by Mr. CATRON:

Q. You have been down there for the last twenty years?

A. Yes, sir.

Q. How long since the railroad come in?

A. I think about seven years.

Q. About that time didn't you hear the title to the John Heath grant talked about?

A. I haven't paid no attention about the railroad coming in there.

110 Q. Didn't you hear this title talked about then?

A. No, sir; the first time I ever heard it talked about was in the newspapers a few years ago.

Q. Didn't you know that people had a claim on file for that land ten or twelve years ago and were asserting title under the John Heath grant?

A. I have not heard of it.

Q. The first time you went to Donna Ana county was in 1847?

A. Yes, sir.

Q. Where did you live?

A. Donna Ana.

Q. How long did you remain at the town of Dona Ana?

A. I was there about six months. I stopped there about five or six months.

Q. Where did you go to from there?
A. Las Cruces.
Q. How long did you remain there?
A. I took a trip to California in 1852, and that has been my residence ever since.
Q. Are you acquainted with Horace Stevenson?
A. Yes, sir.
Q. Do you know anything about when he first went to that country?
A. Not positively; only from hearsay.
Q. Did you ever see him when you went there?
A. I have heard others say he went there in 1838, I think.
Q. Do you know when Henry Curleau went there?
A. He went about the same time Stevenson did.
Q. Did Mr. Duncan, the father of Mrs. Stevenson—did you know him?
A. Yes, sir.
Q. Do you know when he went there?
A. Stevenson, Curleau, and Duncan, all those people all went there about the same time.
Q. Stevenson, that is the father of the present probate clerk of Donna Ana county?
A. Yes, sir.

Re-examination by Mr. NEWCOMB:

Q. About how many people are there living down there in the Mesilla valley now?

111 Mr. CATRON: Objected to as not the best evidence.
Ov*h*ection overruled.

A. I can't tell exactly; about six or seven thousand.
—. Don't you think there is eight thousand?
A. There may be eight thousand. I never paid any attention.
Q. From the time you went to Donna Ana, in 1847, you have lived in Las Cruces ever since. Now, as to the population, how many people are there?
A. About six thousand in Donna Ana and Las Cruces and the ranches around.
Q. At the time you settled how many were there?
A. They were settled close to the town and I don't suppose there was one-third of that.
Q. Why did they settle close to the town?
A. On account of the Indians.
Q. How did they cultivate their lands those days?
A. They lived in town and went out armed together in the fields.

Mr. CATRON: Objected to as incompetent and irrelevant.
No ruling.

Q. Now, in Mesilla, how many people are there living there?

A. I have estimated—that estimate takes the population up to San Miguel. Take them to San Miguel, I suppose there are 5,000 people.

Q. Now, in those days how did people make their living, generally?

A. Farming.

Q. From 1847, when you went there, up to the present time, state whether or not continuous settlements have been formed there.

Mr. CATRON: Same objection.

A. Yes; they have been going on.

Q. The settlement there has been continuous?

A. Yes, sir.

Recross-examination—Mr. CATRON:

Q. You say that in Donna Ana and Las Cruces there are
112 6,000 people?

A. On the Mesilla grant there are about 5,000 people.

Q. There are some people in Donna Ana county below Mesilla?

A. Yes, sir.

Q. There are other people down there?

A. Yes, sir.

Q. And there are some people on the other side of the river, further below?

A. Yes, sir.

Q. And there are some people in Donna Ana county towards La Luz, Col.?

A. Yes, sir.

Q. Has there not been a great increase in that county since 1890?

A. It has been increasing all the time.

Q. How many votes were cast in the precinct of Donna Ana at the last election?

A. I could not say.

Q. Do you know how many votes were cast at Las Cruces, in the two precincts?

A. I don't know.

Q. In the precinct of Mesilla?

A. I don't know.

Q. Do you know how many were cast in Santa Tomas?

A. Do you say votes? I do not know how many votes were cast in any one precinct.

Q. Do you know how many votes were cast in the whole county?

A. No, sir.

Q. You hav-n't much idea, than, of the population of any of that country down there?

A. Only by traveling back and forth, but I do not know how many there are in any one precinct.

Examination by Mr. FISKE:

Q. You have described several settlements down there. State whether or not there was an old settlement on the Garcia grant, the Barcito grant.

A. There were some old shanties there that the Garcias lived in.

Q. It has been an old and continuous settlement, has it?

A. They lived there some time, and also at a place called Amolis; that is on the grant also. They lived there many years; I
113 don't — how long they lived there.

Q. You refer to the same grant—of Hugh Stevenson?

A. Yes, sir.

Q. The settlement there has been continuous, has it?

A. I don't remember when the Garcias left.

Q. That is considered one of the old settlements down there?

A. Yes, sir.

GEORGE ACABAC, a witness called and sworn on behalf of respondants, testified as follows:

Examination by Mr. NEWCOMB:

Q. What is your age and residence?

A. I am seventy-six years old, and live at Donna Ana.

Q. When did you first come to this Territory?

A. I come to Donna Ana in 1848 with the 8th company of dragoons under General Sackett.

Q. Where have you lived since that date?

A. Pretty near all the time in Donna Ana. I have been away two or three times.

Q. You have lived practically all the time on your ranch in Donna Ana?

A. Yes, sir.

Q. When you got to Donna Ana in 1848 did you settle?

A. Yes.

Q. What was the condition of the country then and for a great many years afterwards as to the safety of the inhabitants?

A. People couldn't travel with any safety unless they assembled in big armed parties, unless they run a great deal of risk, and many were killed in those days.

Q. Did you get well acquainted with the people in that country?

A. Yes, sir.

Q. All the people around there?

A. Yes, sir.

Q. Did you ever hear anything about a grant called the John G. Heath in that community?

A. Not until here lately.

114 Mr. CATRON: Objected to as incompetent, irrelevant, and immaterial and as having no bearing onn this case.

Objection overruled.

Q. What grants in any were known by the people there?

A. The Dona Ana grant and the Stevenson grant were about all that I heard much about.
Q. Did you know Price Cooper?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. In '48.
Q. Where?
A. Mear Donna Ana, on the road traveled by us.
Q. How old a man was he at that time?

Mr. CATRON: Objected to, as no foundation has been laid and as immaterial.
No ruling.

A. He appeared to be a man about my own age at that time; we appeared to be about the same age.
Q. Describe his looks.
A. He was a small, round-faced man, red-faced, dark-complected, and was a heavy-set man.
Q. Can you state now from his appearance whether he could have been any older than you; and, if so, how much?
A. I might answer. He probably might have been a year or two older; I don't think he could have been any older than that from his appearance, to the best of my knowledge.
Q. Do you know where he was living at that time?
A. He was on the road at that time with Scimmer; that was the agent.
Q. Did you ever hear of a colony of Americans going to El Paso or to the Bracito grant in 1820, '22, '23, or '24?
A. I have never heard anything of the kind until here lately.

Mr. CATRON: Object to the question and answer, as no foundation has been laid, and as incompetent and immaterial.
No ruling.

Q. Did you ever hear of any person claiming land in that valley under what was called the John Heath Colony grant?
A. Never.

115 Cross-examination by Mr. CATRON:

Q. You don't pretend to know much about what was there before you went there, do you?
A. No, sir, of course not; only from the looks of the country, and the people give one a pretty good idea.
Q. This fellow Price Cooper was a pretty well preserved man?
A. He must be.
Q. When you first saw him?
A. Yes, sir; he was a good fellow, brown and hearty.
Q. Good looking?
A. I don't know; if he had not been so brownish and rusty looking he would have been handsome.
Q. Looked about your age. Were you handsome?
A. I was called the beauty of the country.

Q. Wasn't he a good-looking man when you first saw him?
A. Yes.
Q. You were simply jealous of Price Cooper and was afraid he would get ahead of you?
A. Far from it.
Q. You have never lived in El Paso?
A. No, sir.
Q. How far is the place where you lived from El Paso?
A. It is always called 48 or 50 miles.
Q. You say a long time after you went down there the Indians were very dangerous?
A. Yes, sir.
Q. People didn't travel about much?
A. No, sir.
Q. But stayed at home?
A. Yes, sir.
Q. Didn't know much about what was going on in the balance of the world?
A. We would hear occasionally.
Q. You didn't know what was going on in those days in the balance of the territory?
A. No, sir.

By Mr. FISKE:

Q. You kept pretty well posted within forty or fifty miles, didn't you?
A. Yes, sir; about who owned land and who cultivated and who lived there.
116 Q. Pretty well posted about the Stevenson grant, for instance?
A. Yes, sir; I took some of those lands myself.

PABLO MELESDRES recalled for further examination.

By Mr. FISKE:

Q. You live in Donna Ana; when did you go there to live?
A. In 1843.
Q. You have lived there ever since?
A. All the time.
Q. State whether or not the settlement made there in 1843 has been continuous and the people have lived there ever since or not.
A. Yes, sir.
Q. What industry do the people there follow for a living?
A. Farming; generally all of them.
Q. Under what conditions did they have farms there in the early days?
A. In the early days the people would organize in different divisions. If there were sixty men thirty would go out and work in the forenoon, and then the other thirty would remain in the place and protect the families, and then they would change.

Q. Don Pablo, did you ever hear of the people there — anything of a grant extending over that country called the Juan Gid grant?

A. I have not known anything about this; I have always known of the grant which was called the Bracito grant, which was a grant that belonged to my grandfather, Don Antonio Garcia. That was the only grant but the Dona Ana.

Q. Do you know of any other in the vicinity?

A. The Dona Ana and the Mesilla.

Q. Was there anything known or heard of by the people you have lived with, and did you ever hear of an American colony ever coming to El Paso or Bracito along in the early 20's or at any time?

A. I never heard anything about this until Santiago McGuffin passed through Donna Ana.

117 Mr. CATRON: Objected to, as immaterial and irrelevant. No ruling.

Q. When did he pass through there?

A. I think he passed there between the years '44 and '45. He passed before the American troops passed.

Q. Was there ever anything heard of an American colony settling on the Bracito grant way back in '22, '23, '24, or '25; anything of that kind ever heard of?

Mr. CATRON: Objected to as the witness has already answered that.

A. Nothing was ever heard; only about the ranch of Don Antonio Garcia at that place.

Q. Hear anything about anybody bringing machinery, farming utensils, and so forth to that country back in '23, '24, and 25?

Mr. CATRON: Objected to for same reasons.

A. No, sir.

Q. Do you know of any claim ever being made for the land down there in the Mesilla valley under a grant called the Juan Gid.

Mr. CATRON: Objected to for the same reasons.

A. I did not know until about three or four years ago, when they were going for the recorder there in the county court.

Q. That was the first ever heard of it by the people, so far as you know?

A. That was the first ever heard of it by the people.

Cross-examination by Mr. CATRON:

Q. You were born in the year 1835?

A. In the year 1836.

Q. You don't know much about what took place prior to your birth, do you?

A. I know some from what my father told me.

Q. Of your own knowledge you don't know anything?

A. No, sir.

Q. You don't know anything that took place until ten years after you were born?

A. I know that.

118 Q. How old were you when the American troops passed through Donna Ana?

A. I was ten years already.

Q. You remember the circumstances?

A. Yes, sir.

Q. You say the Indians were very bad about that time?

A Yes, sir.

Q. People didn't travel around much?

A. Yes; they traveled.

Q. Not much?

A. Much.

Q. Go around with an escort?

A. About fifteen or twenty would assemble together with caretas (carts), and then they would make company for the parties.

Q. But that didn't take place very often?

A. Yes; it would al nost all the time.

Q. Excursions would go out every day?

A. No.

Q. Every week?

A. No; ever- month, at least.

Q. Where were you in 1823?

A. I don't know.

Q. Where were you in 1853?

A. Donna Ana.

Q. Where were you born?

A. El Paso.

By Mr. FISKE:

Q. After leaving El Paso did you go to Donna Ana?

A. Yes.

Q. How many years did you live in El Paso before going to Donna Ana?

A. I do not know how many years. I was born in 1836, and already had three brothers older than myself.

Q. Did you ever hear your father state where he lived prior to your birth?

A. Yes, sir.

Objected to. Overruled.

Q. Where did he say he lived?

A. In San Bartolo, below.

Q. How far is that from El Paso?

A. It is on the other side of Chihuahua; the other side of Santa Rosalia.

Q. How long had he been living in El Paso before you were born?

A. I do not know.

Q. From information which you have derived from conversations and statements from your father?

119 Mr. CATRON: Object to all such conversations as hearsay, no foundation has been laid, and as being absolutely irrelevant to any issue in this case.

Admitted subject to the objection.

A. From information, my father lived ten years before he was married in El Paso.

Q. Was he married in El Paso?

A. Yes, sir.

Q. And he lived in El Paso from that time until you went to Donna Ana?

A. Yes, sir.

Q. How long, how many years, after your father and mother were married were you born?

A. Six.

Mr. J. D. BRAYAN recalled for examination by Mr. Springer:

Q. Have you made that list of entries in the townships and ranges referred to in your former examination?

A. Yes, sir.

Q. Present it, please.

(Witness presents paper.)

Mr. SPRINGER: We offer that in evidence as Defendants' Exhibit No. 17.

(Which said document was marked Defendants' Exhibit No. 17.)

Mr. CATRON: I wish to object to that for the same reasons as stated in that part of the record referred to this same matter.

Admitted subject to the objections.

Defendants rests. Respondants rest.

Rebuttal for Petitioners.

Mr. CATRON: If the court please, as to the translations, I guess the court will determine without any evidence what is the correct translation, if necessary; here is the translation of the officer

120 translator, which it is not necessary to offer.

I offer certified copy of the record made by the town council in August, 1823, which is a grant for four thousand acres of land to Jose Lerma for himself and those who were to colonize with him, and the certificate shows the grant to have been held by him. This grant was made by the town council of El Paso, the same body which made this grant of John Heath.

(Said document was thereupon marked Exhibit "Y" for petitioners.)

Mr. SPRINGER: We would — to have an opportunity to examine this document before objecting to it specifically, but we offer an object-, based upon what Mr. Catron says, that it is incompetent and irrelevant and immaterial to this case, as (I see) also it is not prop-

erly attested, and as not bearing in any way upon the issues in this case.

Mr. CATRON: I also offer in evidence the confirmation of the Hugh Stevenson grant, to show the reservation therein as to this grant.

(Said document was marked Exhibit "Z" for petitioners.)

Petitioners rest.
Case closed. Argument followed.
Submitted June 22nd, 1895.

I hereby certify the above and foregoing fifty-five pages contain a full, true, and correct transcript of all the proceedings had in open court in the case of J. B. Cessna *et al. vs.* The United States, No. 59, on the records of this court.

LUMAN F. PARKER, JR.,
Stenographer Court of Private Land Claims.

October 21, 1895.

121 Be it further remembered that upon the trial and hearing of said cause before said court the following documentary proof referred to in the report of the official stenographer was introduced, to wit:

122 EXHIBIT A FOR PETITIONERS.

In the Court of Private Land Claims.

J. B. CESSNA *et al.*, Plaintiffs,
vs.
UNITED STATES *et al.*, Defendants. } Number 59.

It is hereby stipulated between the plaintiffs and defendants that the petition of Enrique Palmer, of St. Louis, Mo., may be taken before Thomas B. Harlan, a notary within and for the city of St. Louis and State of Missouri, without commission, the plaintiffs appearing by J. B. Cessna and the defendants appearing by Matt. G. Reynolds, U. S. attorney.

ENRIQUE PALMER, being first duly sworn, deposes as follows:

Q. Please state your name, age, residence, and occupation.
A. My name is Enrique Palmer; my age is about 59; I reside in the city of St. Louis, and I am an attorney-at-law.
Q. Where were you living in 1881 & '2?
A. In St. Louis, Mo.
Q. Had you ever any connection as a lawyer with the claim of Dr. John G. Heath to a Mexican land grant made by the Mexican government to said Heath in 1823 for a trac*k* of land situated on the Rio Grand river about 40 miles northwest of El Paso?
A. Yes; I have been connected with that matter; I think in 1882 or thereabouts.
Q. Who were associated with you?

A. A Mr. Mansfield, of New Florence, Mo., was associated with me in the prosecution of this claim; in fact, it was through him that I became connected with it.

Q. Was there some other lawyers associated in the same case beside yourself and Mansfield; if so, who were they?

123 A. After I was connected with it two or three years there were other attorneys, one Judge John O'Neil and R. W. Jones, attorney.

Q. Where was Jones living?

A. Jones was living in St. Louis, but subsequently removed to Seneca, Mo., where he lived for some years.

Q. How long were you working at the case?

A. I think I had been working at the case altogether about ten years; it may only be seven or eight years; I cannot recollect distinctly.

Q. Well, when did you commence proceedings in any court or before the surveyor general of the United States?

A. Well, Mr. O'Neil went to Santa Fé, New Mexico, several times, and had the record there transcribed, and communicated with the register there and the Government officers in relation to the matter. Mr. Jones also employed a Mr. Cunningham to assist him. He also had some communication with the officers at Santa Fé.

Q. These parties, as lawyers, that you speak of were to prosecute the claim and furnish the money for the case and expenses of carrying on the case?

Objected to for the reason that it is immaterial as to what the contract with clients may have been.

A. Well, I had a contract——

Q. Give it briefly.

A. Well, I took the case from Mr. Heath with the understanding that we were to furnish all the money necessary to prosecute it to a successful issue, he to furnish no money, because he was too poor, and after we succeeded, if we ever did succeed, that we were to be compensated for our services.

Q. Did you fail in the beginning and in the prosecuting of the case before the court or the surveyor general; and, if so, why?

124 A. We failed—I presume it would be counted a failure—because we did not have the title confirmed by reason of the want of funds necessary to prosecute the claim. The parties that offered to advance the money, and did advance some little, finally failed in providing the sum necessary to prosecute it, and therefore we were finally compelled to let the matter go.

Q. Gave up the case?

A. We could not go any further, because we had no funds to prosecute any further.

(I hand the witness paper dated May 19, 1882, and ask the witness)—

Q. Did you ever see that paper before?

A. Yes, sir; I saw this paper before.
Q. When?
A. This paper?
Q. Yes.
A. Well, in 1883; on the 19th day of August, 1883.
Q. In whose handwriting is that paper?
A. In mine.
Q. What is the paper?

Objected to; the paper will show for itself.

A. It is an affidavit or statement made by R. J. Heath and sworn to by him before W. P. Ford, clerk of the parish of Caddo, State of Louisiana.

(Paper filed and marked Ex. A.)

Object to it because it is an *ex parte* statement; further, that the official character of W. P. Ford, the alleged clerk, is not shown or vouched for by any authority authorized to serve in his official capacity or is authorized to administer oaths and take affi-
125 davits to instruments; that the loss of the original affidavit is not shown or accounted for, and the instrument itself purports to be a copy of a copy and is in its nature manufactured evidence.

Q. Mr. Palmer, did you mean to say a moment ago that it was an affidavit or a copy?
A. It is a copy; certainly it is a copy.
Q. What do you know about that being a copy; how do you know it? What is your recollection?
A. Well, I know it is a copy because I received the original by mail from Mr. R. J. Heath and had it for some time in my possession, and of course read it over once or twice myself and read it to several others, and then in 1883, at the time that this copy was made, I handed over the original affidavit to Mr. R. W. Jones, who was associated with us in the prosecution of this claim, and not wishing to lose the paper altogether before I handed it to Mr. Jones I made a copy of it, and this is the copy, and retained the same; retained this copy perhaps 3, 4, or 5 years, six years, mayby, and then, I think, I handed it over to Mr. Cessna, who is now connected with this claim.
Q. Is it a correct copy?
A. It is a correct copy.
Q. Did you ever see the original since that time; since you gave it to Mr. Jones?
A. No; I never did. I wrote to him for it; wrote to him for it on several occasions, but I never got it. I never have seen it since.
Q. Is Mr. Jones living or dead?
A. I understand that he is dead; I hear so.
Q. Where was Jones at the time you sent it to him?
126 A. He was at Seneca, Mo., in the southern part of the State.
Q. Did you have frequent communication with Mr. Heath at that time in reference to that business?

A. Yes, sir; a great deal of communication with reference to this claim. He wrote to me quite often, sometimes letters, sometimes postals; mayby 25, 30, or 40 altogether.

Q. Did the original have the official seal of the officer, with his mark?

A. Yes, sir.

Q. You have made search in your office for the original where it would likely be found?

A. I have looked over all my papers to see what there was in relation to this claim; hunted up every paper I had at home or in my office, and I, of course, never found the original of this affidavit.

Q. You were connected with this case quite a long time; how long?

A. 7, 8, or 9 years altogether.

Q. In your investigation of the matter what did you find as common reports, if anything, relative to Dr. Heath having taken a colony to New Mexico?

Objected to as heresay testimony and not following with any one of the exceptions rendering heresay testimony admissible.

A. Well, I can say this only: that I have heard during my connection with the case from diverous persons, whose names, of course, I do not now remember, in this city and persons who came to this city that Dr. Hetah organized a colony in the central part of this State and came to St. Louis with that colony, and that he brought different articles—a printing press, and so on—and went down the river, and from there to New Mexico, which was the seat of this grant.

127 Q. You did not state the period when he went down.

A. About 1822 or '3 or '4; along there, I believe. That, I believe, is the extent of my knowledge on this subject.

Q. Was this information gotten from old persons?

A. Some were old persons, others not.

Q. Can you call the name of any one at all from whom you got this information?

A. Well, none that is now living. There is one old man that is dead that spoke to me about that matter, that is Eugene Leitensdorfer, but that is the only one of any age that I can remember now.

Cross-examination by MATT. G. REYNOLDS, U. S. att'y:

Q. Did you ever know Dr. Heath in his lifetime?

A. I did not.

Q. Did you know R. J. Heath in his lifetime?

A. Personally, I did not.

Q. You never had any personal conversation with this man?

A. No. I never saw him.

Q. Was this affidavit made in response to instructions by his attorneys in the prosecution of the claim against the Government?

A. Yes; I think so.

Q. Had the case then been instituted in the court before the surveyor general?

A. Well, there was something done, but what I am not sure.

Q. Was any notice served upon the surveyor general on the taking of this affidavit?

A. Not that I remember.

Q. Did you serve any notice upon the U. S. attorney for New Mexico?

128 A. Not to my recollection.

Q. Was this copy ever filed with the surveyor general?

A. That I do not know; not while I had it.

Q. Do you know whether the one from which you took this copy was ever filed with the surveyor general?

A. That is the one you are speaking of. Which do you speak of? I know this was not, because it is a copy.

Q. Do you know whether suit was ever instituted before surveyor general for this claim under the law of 1854?

A. I do not.

Q. Did you know about the facts connected with the attempt of Dr. Heath to settle this, or is it what other parties have told you?

A. Altogether.

By agreement signature waived.

129 EXHIBIT "A."

STATE OF LOUISIANA, }
Parish of Caddo. }

Before me, the undersigned authority, personally appeared R. J. Heath, who, being by me duly sworn according to law, deposes and says that he is 67 years of age and a resident of Shreveport, Caddo parish, Louisiana; that he is the son of John G. Heath, deceased; that some time in the year 1822 his said father became the owner, through the government of Mexico, of a colony grant of land located in the then province of New Mexico, said grant being known as the "Bracito grant," the centre of which is on a small island in the Rio Grande river 30 miles, more or less, above El Paso, Texas, and measuring 5 leagues in length and five leagues in breadth. Affiant further says that the grantee, his father, stipulated in said grant to colonize the land with American citizens; that the grantee therefore returned to the United States; that he organized a company of colonists, in accordance with the provisions aforesaid, composed of families, mechanics, artizans, and farmers, and also that he employed a printer and purchased a printing press; also a large quantity of agricultural implements and machinery and all necessary supplies and paraphernalia for the needs of a colony, and that with this colony and material aforesaid he crossed the boundary of the United States, passed into Mexico, and reached the port of Soto La Morino; that affiant was one of the party, and that after the arrival at said place the Emperor Iturbide was put to death, when the country was thrown into a state of revolution. He further says that the Mexican

government as then organized refused to permit the said grantee and his colonists to occupy said grant of land; that said grantee and his colonists remained in the country for a long time, ready and anxious to occupy and improve said grant, and declared to the authorities their desire to occupy the same; that they demanded possession and united upon carrying out the provisions and
130 stipulations as aforesaid contained in the said grant or conveyance; that they waited through three years in the hope that the Mexican government would accord to them the rights they had acquired to take possession of and hold the land aforesaid, and that at the end of that time the authorities of the government of Mexico ordered them to leave the country under pain of imprisonment, and they were compelled and forced, by reason of such order, to quit the territory of Mexico and return to the United States.

Affiant further says that the grantee, his father, and his colonists, during their stay in Mexico, in the attempt to locate upon said land were persecuted and threatened and the grantee robbed of all his property by the people of that government, and that the property so taken from him amounted to a sum not less than $80,000 (eighty thousand dollars).

Affiant says that he was with the said expedition all the time it remained in Mexico, has personal knowledge of all the facts stated in this affidavit, and that the same are true in every particular.

R. J. HEATH.

Subscribed and sworn to before me on this 19th day of May, 1882, at Shreveport, State of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of the court.

[SEAL.] W. P. FORD, *Clerk.*

I certify that the foregoing is a true copy of the said affidavit of R. J. Heath; that I wrote it out from the original in order that I might send the original to Mr. Jones at Senaca, Mo.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at office, in St. Louis, Mo., this 19th day of May, 1883.

ENRIQUE PARMER,
Notary Public.

131 EXHIBIT "C" FOR PETITIONERS.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, F. A. Leonard, clerk first district court of the State of Louisiana, do hereby certify that the following is a true copy of the records in my office, of which I am the proper custodian:

"W. P. Ford was duly elected clerk of the first district court for the term of four years and qualified as such on March 25th, 1880."

I further certify that as such officer he was fully authorized to administer oaths on the 19th May, 1882.

Given under my hand and seal of office, at Shreveport,
[SEAL.] Louisiana, on this April 20th, 1895.

F. A. LEONARD,
Clerk 1st District Court of Louisiana.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, A. D. Land, judge of the first judicial district court of Louisiana in and for the parish of Caddo, do certify that F. A. Leonard, whose name appears signed to above and foregoing instrument, is and was at the time of signing same the duly qualified clerk of said court; that his signature as above is genuine, and that all of his official acts as such clerk are entitled to full faith and credit, and said attestation is in due form.

Given under my hand at Shreveport, Louisiana, on this the 20th day of April, 1895.

A. D. LAND,
Judge First Judicial District Court of Louisiana.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, F. A. Leonard, clerk of the first judicial district court of Louisiana in and for the parish of Caddo, do certify that A. D. Land, whose name appears signed to above and foregoing instrument or certificate, is and was at the time of signing same the duly qualified judge of said court; that his signature as above is genuine, and that all of his official acts as such judge are entitled to full faith and credit, and said attestation is in due form.

Given under my hand and seal of office, at Shreveport, Louisiana, on this the 20th day of April, 1895.

[SEAL.]

F. A. LEONARD,
Clerk First Judicial District Court of Louisiana.

132 EX. B FOR PLAINTIFFS.

In the Court of Private Land Claims.

J. B. CESSNA *et al.*, Plaintiffs,
vs.
UNITED STATES *et al.*, Defendants. } Number 59.

It is hereby stipulated between the plaintiffs and the defendants that the deposition of Mrs. B. N. Jones, of Montgomery City, Montgomery county, Missouri, may be taken before Thomas B. Harlan, a notary public within and for the city of St. Louis and State of Missouri, without commission, the plaintiffs appearing by J. B. Cessna and the defendants appearing by Matt. G. Reynolds, U. S. attorney.

Mrs. B. N. JONES, being first duly sworn, deposes as follows:

Q. Please state your name, age, and residence.

A. Belinda N. Jones is my name; I reside in Montgomery City, Montgomery county, Mo.; age, 45.

Q. Who was your husband?

A. Robert W. Jones was my husband.

Q. When were you married?

A. Married in October, '79.

Q. Is Mr. Jones living or dead; and, if dead, when did he die?

A. He is dead. He died August, 1886.

Q. What was his business?

A. He was a lawyer.

Q. Where was he living in '82 and '83?

A. We were living in St. Louis in '82, and in the spring of '83 we left St. Louis and went to Seneca, Mo.

Q. Have you any knowledge of Mr. Jones having been connected as a lawyer with the case known as the Heath land grant of New Mexico with Mr. Palmer, Mansfield, and others?

133 A. I knew of Mr. Jones having connections with Mr. Mansfield in regard to a Mexican land grant. Mr. Heath was not associated in my mind.

(Handing paper to witness.)

Q. What, if anything, do you know of the paper or affidavit endorsed Affidavit of R. J. Heath, concerning a land claim of John G. Heath?

A. After my husband's death I sorted his papers, giving everything in regard to local matters to the administrator and keeping other matters myself. Among these papers were a great many deeds. I determined to burn everything of no value, and so I spent three or four days sorting papers, looking at every paper before it was burned, simply at either the label or the title. While sorting these papers I came across a paper like a deed, with a label upon it. This was labeled Affidavit of Robert J. Heath concerning land granted to his father, John J. Heath. I held the paper in my hand and hesitated as to whether it was of any value. There was nothing in that title concerning any case that I had known Mr. Jones connected with, for I had never thought of that Mexican land claim otherwise than as Mansfield's business. In opening the paper like this (opening paper in her hand) it was an affidavit. I did not read it. It was among a lot of deeds that I knew to be of no value, and I burned it.

Q. It was burned?

A. Yes, sir; all those papers were burned. I feel sorry for it.

Q. Please state further the character and appearance of that paper, as to whether it had an official seal.

A. When I saw it it was a deed; that means it had an official seal on it. It was a double piece of paper, like a deed. It
134 was like a deed; that was all I knew. Two years ago, when Mr. Cessna asked me if I knew anything or had any papers

about a Mexican land claim, I could have sworn then that I knew nothing about it, but when he spoke of the names and said it was an affidavit endorsed by R. J. Heath concerning a land claim of John G. Heath, it came back to me of my possession of it, but at that moment it had no connection of anything I had ever known before. That was the reason I considered it of no value.

Q. When you saw it looked like a deed was it writing or printing?

A. I had been burning deeds. Mr. Jones had owned a great quantity of land, and he kept everything. There was among his memorandum all the papers that he had had for years, and they were done up in bundles or packages, but these deeds were not, and that was why I opened the deeds at looked carefully at the labels.

Q. The instrument that you spoke of—was the label on it or on the envelope?

A. It was on the paper. A great many was put in envelopes and the label marked on them, but this was not in an envelope.

Cross-examination by MATT. G. REYNOLDS, U. S. att'y

Q. You did not read the paper?

A. I did not.

Q. You did not know its contents?

A. I did not.

Q. You knew it as Mansfield's claim?

A. Yes; I knew it as Mansfield's claim, but did not know Heath was about it.

135 Redirect examination:

Q. How did you know it as Mansfield's?

A. Because my husband had had an agreement with Mansfield about it, and I tried to persuade my husband not to have anything to do with Mr. Mansfield.

Q. Have you hunted carefully for this affidavit among the papers of Mr. Jones, where it would likely be found?

A. Among those that are left; yes.

By agreement, signature waived.

136 EXHIBITS C, D, E, F FOR PLAINTIFFS.

In the United States Court of Private Land Claims.

J. B. CESSNA *et al.*
vs.
THE UNITED STATES *et al.* } No. 59.

Depositions of witnesses produced, sworn, and examined on the 15th day of April, in the year of our Lord 1893, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at New Florence, in the county of Montgomery, State of Missouri, before me, Thomas J. Powell, notary public, in a certain cause now pending in the United States court of private land claims, between J. B. Cessna *et al.*, plaintiff-, and The United States *et al.*, defendants, on the part of plaintiff-, in pursuance of the annexed commission and at the time and place agreed upon by the parties hereto; J. B. Cessna appearing as counsel for the plaintiff-, Thomas B. Harlan for the defendant-.

Plaintiff produced the following witnesses in their order, as follows:

EXHIBIT "D" FOR PETITIONERS.

ELIZA J. BIBB, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. 1. State your name, age, and residence.

A. Eliza J. Bibb; residence, Americus, Missouri; age, 35 years.

Q. 2. Are you a relative of Dr. John G. Heath; and, if so, what relation?

A. I am a gran-daughter.

Q. 3. Who was your father, and what relation did he bear to Dr. John G. Heath?

A. Robert J. was my father's name. He was a son of Dr. John G. Heath.

Q. 4. Who raised you, Mrs. Bibb?

A. I was raised by my aunt.

Q. 5. Who was your mother?

A. Sarah Dyer was my mother's name.

137 Q. 6. When did she die?

A. In 1863.

Q. 7. How old were you at that time, of her death?

A. I was five years old.

Q. 8. When were you taken by your aunt?

A. About four months after my mother's death.

Q. 9. Did you ever see your father after that time?

A. No; I never saw him.

Q. 10. Do you remember your father?

A. Yes; I remember him.

Q. 11. Tell the circumstances of his leaving, when he left, and how he left.

A. He was taken prisoner by the Union soldiers and put in prison.

Q. 12. Did he go into the rebel army?

A. He was exchanged by the Union for a Southern soldier.

Q. 13. After the war what became of him?

A. He was in the South, in Shreveport, Louisiana.

Q. 14. Did you have frequent communications with him in his lifetime?

A. Yes, sir; we corresponded.

Q. 15. Can you tell about when he died and where?

A. He died in 1885, in San Antonio, Texas.

Q. 16. Mrs. Bibb, have you heard the heirs talk anything of this claim of land in New Mexico?

Objected to as hearsay.

A. I have heard them speak of this property.

Q. 17. Mrs. Bibb, have you got in your possession or do you know what became of the original title papers of the tract of land granted by the Mexican government to Dr. John B. Heath, in what is now the Territory of New Mexico, in the year 1823?

A. No; I haven't got them; but I know that they were burned in 1863 by the Union soldiers after father was taken prisoner.

Q. —. State where and how they were burned.

A. It was in Gasconade county, Missouri; all of our property was destroyed by the Union soldiers. The papers were in a chest with the other things burned.

138 Q. 19. Please state fully the circumstances of your having to leave the place and the reason why you left.

A. We were notified a few hours before sundown that the soldiers were to come in and take our home from us. Then my mother took myself and we took a boat and came across the river. After we started we looked back and saw the things burning.

Q. 20. Mrs. Bibb, what, if any, effort or acts have been done within your knowledge by your father, yourself, and other heirs of John G. Heath, within the last twenty or thirty years, towards a prosecution for the claim or right to a tract of land in New Mexico, not far from El Paso, Texas?

Objected to as incompetent and irrelevant.

A. Yes; I know that in 1881 and 1882—I know that they tried to get up a suit of this land grant, and my aunt told me that they could do nothing in this State, because our papers were burned by the soldiers in 1863.

Q. 21. Where was your father in that time, in 1882, all the period you speak of?

A. In Shreveport, Louisiana.

Q. 22. Did or did not the heirs have some difficulty or trouble agreeing upon the attorney to prosecute the claim, and what was the reason it was not prosecuted?

Objected to as incompetent, irrelevant, and immaterial.

A. I know my father did not like the way some of the attorneys acted in their proceedings.

Q. 23. What kind of attorneys did he want with reference to north and south?

A. He did not like the attorneys, because they were Union men.

Q. 24. Is that the reason he assigned?

A. It was.

Q. 25. What heirs, if any, did your father leave?

A. I was the only child, but he left a wife.

Q. 26. Did you ever see his wife?

A. Not until yesterday.

Q. 27. Did you ever have communications with her after his death?

A. She notified me of his death, and I answered that and never got anything more from her.

139 Cross-examination:

Q. 28. Mrs. Bibb, you say you were raised by your aunt?

A. Yes.

Q. 29. Where?

A. Principally here—in New Florence.

Q. 30. How long have you lived in New Florence?

A. We lived here seven years; but I went to my aunt, who lived in Loutre.

Q. 31. How long has this been your home?

A. 30 years.

Q. 32. Did you ever know Dr. John G. Heath?

A. No.

Q. 33. Did you ever see him?

A. No.

Q. 34. Have you any personal knowledge of him or his whereabouts?

A. No, sir; only from hearsay.

Q. 35. You say those title papers referred to herein were burned?

A. Yes, sir; they were burned.

Q. 36. How do you know they were burned?

A. Because I know all of my father's papers were in that chest, *but* -any — my grandfather's papers, too, and they were all burned.

Q. 37. How did you know that there were any papers in the chest?

A. Because I had seen them in there, and heard my grandmother say they were there and my aunt, and that they were burned.

Q. 38. When did you hear them say this?

A. I heard my grandmother say this about six years after I was about 10 or 11 years old, and my aunt told me so in the year 1881 and 1882. It was between those two years.

Q. 39. You say you saw papers in that chest?

A. Yes, sir.

Q. 40. Were the particular papers referred to herein and known as the title papers of a grant purported to have been given to Dr. Heath by the Mexican government in that trunk?

A. I know that my father's and my grandfather's papers were in that trunk, and that I was told afterwards that they were my grandfather's papers; that they were in reference to the land in
140 Mexico.

Q. 41. Did your father or grandfather owe any land that you know of?

Objected to as irrelevant, immaterial, and a possible subject of cross-examination.

A. I don't know anything about them owning the land only from hearsay, and that the grant had been given.

Q. 42. I referred to land anywhere; in this State or anywhere.

A. My father owned land in this State.

Q. 43. Did he own the place where you were living?

A. Yes, sir.

Q. 44. Was your father in business?

A. Yes, sir; he had been; in Gasconade county.

Q. 45. Then, is it not probable that the papers that were contained in that chest related to the titles and matters other than this Mexican grant?

Objected to as a conclusion and not competent.

A. Some of the papers I know were about my father's business; but the others were about my grandfather's business.

Q. 46. Do you know of your own knowledge that there were title papers in that chest referring to this Mexican grant? Answer of your own knowledge.

A. No; not that I know myself; but I know they were there because I was told by parties that did know.

Q. 47. Who told you they were there?

A. My grandmother and my aunt.

Q. 48. When did they tell you they were there?

A. In 1867 my grandmother told me, and I frequently heard my aunt say so.

Q. 49. Did your grandmother tell you that these particular papers were in that chest?

A. She said the papers were all burned of my grandfather's relating to the Mexican land.

Q. 50. Are you sure she said Mexican land?

A. She said the land grant that my grandfather had taken.

Q. 51. Taken from whom?

A. From the Mexicans or Spaniards.

141 Q. 52. How old were you when this property was burned?

A. I was five years old.

Q. 53. Do you read Spanish?

A. No, sir.

Q. 54. How old are you now, Mrs. Bibb?

A. 35.

Q. 55. Is your health good?

A. Yes, sir.

Q. 56. Is there any reason why, if your expenses were paid, you

could not go to Santa Fé, New Mexico, and testify before the court in this cause?

Objected to.

A. It would be impossible for me to leave my children. They are all small and are now sick.

Redirect:

Q. 57. Please state the condition of your family and yourself about a month ago or more, and could you have gone at that time to Santa Fé?

A. I could not; I was sick myself, and the children also.

Q. 58. Did you inform me of that fact at that time?

A. Yes, sir.

Q. 59. Who is your husband?

A. Malam A. Bibb.

Q. 60. Are you and Malam A. Bibb two of the plaintiffs in this cause?

A. Yes.

Q. 61. Mrs. Bibb, you spoke of your grandmother and aunt having told you about the Mexico papers being burned. Were they or were they not the parties who had the custody of your father's and grandfather's papers at the time the soldiers destroyed them?

A. No; my mother had them in her charge, and we were all living in the same house.

142 Q. 62. At the time your grandmother and aunt spoke or told you of these title papers of the Mexican land grant that was given to your grandfather were burned or destroyed what were you then talking about? Was or was it not in reference to this particular Mexican land grant, and what was said about it?

A. We were talking about the land grant and about the lawyers getting the claim, and she said it was not necessary for them to go on, because all the papers were burned in Gasconade by the soldiers.

Cross-examination:

Q. 63. At the time your aunt made the remark to you that it was not necessary to prosecute the claim how old were you?

A. I was about 28 years old.

ELIZA JANE BIBB.

EXHIBIT "E" FOR PETITIONERS.

FRANCES I. HEATH, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. Please state your name, age, and residence.

A. My name is Frances I. Heath; age, 50 years. Shreveport, Louisiana, is my residence.

Q. Were you ever married?

A. I was.

Q. Who was your husband?
A. R. J. Heath.
Q. Give Mr. Heath's full name.
A. Robert J. Heath.
Q. When and where were you married to Robert J. Heath?
A. I was married in Union parish, Louisiana, in 1865.
Q. Is Mr. Robert J. Heath living? If not, when did he die?
A. He is not living; he died in San Antonio, Texas, in 1885.
Q. About what aged man was he when he died?
A. About 80 years, to the best of my knowledge.
Q. Who was the father of Robert J. Heath?
A. Dr. John G. Heath.
Q. When did you first know Robert J. Heath?
143 A. In 1864.
Q. Where did he come from and what was his former home?
A. From Missouri.
Q. What heirs, if any, did Robert J. Heath leave?
A. He left one daughter and myself, his wife.
Q. Who was that daughter?
A. Eliza Bibb.
Q. Do you know where she lived?
A. She lived in Americus, Missouri.
Q. Were they the only heirs that he left?
A. The only ones, to my knowledge. I never heard him speak of any others.
Q. Did Robert J. Heath leave a will or did he die intestate?
A. He left none to my knowledge.
Q. What, if anything, through information that came from Robert J. Heath, do you know as *the* Dr. John G. Heath having in th- year 1823 or thereabouts obtained a grant or tract of land from the Mexican government through the town council of El Paso, Mexico?

Objects to the witness testifying to what she has heard some one else say.

A. I have heard my husband say that his father owned a grant of land in Mexico, and that they went there with a colony of people to take possession, to occupy and cultivate it and make it their home, and from the time the land was granted to the time they went back there had been a change of officers, and they were not received kindly. These new officers had been put in since his father first got the grant. They didn't want them to have the land and persecuted them; stole their stock and property, and finally drove them from the country, and they had to leave for fear of being killed.
Q. Who interfered and would not let them occupy the land? Was it the Mexican authorities who had previously made the grant?
A. According to my knowledge, those who had made the grant were out of office and new officers were in, and it was the Mexican authorities who interfered.

Q. What, if anything, did he say as regards one of the
144 leading authorities being killed at that time—the Emperor?

A. I don't really remember about that; I could not tell who it was. It was one of the leading officers who was killed, but I don't remember his name.

Q. What, if anything, did you ever hear your husband, Robert J. Heath, say as to having gone with his father, Dr. John G. Heath, with a colony to Mexico, in 1823 or 1824, to settle and occupy this grant or tract of land above referred to.

A. Objected to as hearsay.

A. I have heard him — that when he was a lad of a boy that he did go with his father to Mexico, and that they stayed there about one year, and that the Mexicans treated them so badly that they came back to the United States.

Q. Did they remain there?

A. They did not.

Q. Did they occupy and cultivate this land or did the Mexicans authorities or grantors interfere and prevent them?

A. I don't really know how long they did stay there, but I know that the Mexicans treated them so badly and they were forced to leave under penalty of death; they destroyed their stock, mules stole from them, and broke them up financially.

Q. What, if anything, did you ever hear him say as to expenses of the expedition and their attempt to occupy and cultivate this land?

Objected to as hearsay.

A. I heard him say that his father spent a great deal of money, but I do not remember the amounts. I couldn't say how much, but I know I heard him say that he spent a great deal of money.

Q. As to what condition did they say they were left financially?

Objected to as hearsay, incompetent, and irrelevant.

A. They were ruined financially.

Q. Please explain more fully what you mean by they being ruined *ruined* financially.

A. Dr. John G. Heath had spent a great deal of money and he had carried a colony of people there to settle on the land, and then the Mexicans stole their mules and stock and drove them
145 out of the country.

Q. What, if anything, did you ever hear your husband say as to the Mexican government and authorities having refused to give them and their colony possession and protection, and telling them that they could not occupy the land, but would have to leave the country?

A. Objected to as hearsay.

A. Well, the government wouldn't protect them on the land. They made application to the officers several times, but they would

not listen to them; then they persecuted them so they were finally driven plumb out.

Q. Did or did you not ever hear your husband say that Dr. John G. Heath, in 1823 or 1824, took to Mexico and this land all the colony stores, implements of husbandry, and everything necessary to establish a colony, and in every way on his part complied with the conditions of the grant?

A. Objected to as hearsay.

A. I have heard him say that his father did comply with his part of the contract and take a colony there to settle on the land.

Q. What, if anything, do you know as to the efforts and acts of your husband and other heirs of Dr. John G. Heath during his lifetime and after your marriage in trying to get title to this land?

A. In 1880 or 1881 my husband was corresponding with a man by the name of Fisk and with the other heirs to the estate and tried to get them at that time to agree upon some plan where they might have this claim attended to. The other heirs disagreeing with him, for a while he dropped it; then in '82 he became very much in earnest about it again. We broke up in Shreveport, sold our property there, and moved to El Paso, Texas, in order to be near where this land was, thinking that he would go over into Mexico with his lawyer to look the estate up. The lawyer failed to do what he agreed to do, and this matter was dropped, my husband not having money to carry on any lawsuit.

Q. Was or was not the want of finance the chief reason why the claim was not prosecuted long ago?

Objected to as irrelevant, incompetent, and immaterial.

146 A. From as far back as I knew him lack of means was the cause.

Q. Did or did not Robert J. Heath, as one of the heirs of Dr. John Heath, always assert and claim an interest in a tract of land on the Rio Grande river, in New Mexico, and not far north from El Paso, granted by the town council of El Paso, New Mexico, to Dr. John Heath?

Objected to as hearsay, irrelevant, and incompetent.

A. Yes, sir; he always claimed that he had an interest in that land and that some time he expected to get it.

Cross-examination:

Q. Mrs. Heath, where did you first become acquainted with Robert J. Heath?

A. In Union parish, Louisiana, in the spring of '64.

Q. How long had you lived in Union parish at that time?

A. I came to Union parish in '52 and had lived in that parish 12 years.

Q. How long had Robert J. Heath lived there when you made his acquaintance?

A. He was a rebel soldier at that time and belonged to the army.

I don't think he was in the parish more than one month when I first knew him; probably not so long.

Q. Do you know where he lived before that time?

A. I heard him say that he lived in Missouri, not very far from St. Louis; somewheres on the Missouri river.

Q. Had he ever before been married?

A. He had.

Q. Was his wife then dead?

A. In '64, I do not remember; I only had a short acquaintance with him as a rebel soldier.

Q. How long after that were you married to him?

A. In '65 he came back and we were married in '65.

Q. Was that more or less than a year from the time you first knew him?

A. I think it was probably a little less; something near a year, as well as I remember.

147 Q. Do you know whether or not at the time you married him he had a wife living?

A. I know nothing except what he told me, and other Missourians that were in our part of the country. They told me that his wife was dead, and so did he.

Q. Those were the representations that he made to you?

A. Yes, sir.

Q. As a matter of fact, did he not at that time you married him have a lawful wife living?

A. Not according to my knowledge.

Q. Have you not found out that to be the case?

A. I have not.

Q. Have you any interest or do you make any claim to this property in controversy?

A. I do, as his wife, and expect to get a portion of it.

Q. Was there any ceremony at the time you were married?

A. Yes, sir.

Q. Was there any ceremony ever performed after that?

A. There was not.

Q. Did Robert J. Heath live with you until the time of his death?

A. He did.

Q. You say that you have heard Robert J. Heath say that he went with his father to Mexico in 1823 or '24?

A. I don' remember the dates, but I remember he said he went with his father to Mexico. I won't say what year.

Q. In what year was Robert J. Heath born?

A. I do not know.

Q. How old was he when he went with his father to Mexico?

A. He said he was a lad of a boy.

Q. Well, did you ever hear him say about what his age was?

A. I never did, except he told me once that he was old enough for my father, and he had children, if they were living, would — older than I was.

Q. Did he tell you that he had no children?

A. No, sir; he told me that he had a son and a daughter.

Q. What has became of that son?

148 A. He died.

Q. When?

A. Somewhere about '78, I think; I don't know exact.

Q. When did Robert J. Heath die?

A. He died in '85, 1885.

Q. How old was he at that time?

A. I do not know.

Q. About how old was he?

A. About 80.

Q. Under what circumstances did your husband talk to you about this colony?

A. Well, when this man Fisk wrote to him about it he was very anxious to sell out and move down there so as to try to get possession of the land, but I was not willing to go, and it went on that way for near two years, and he often told me about it and about what a fine estate it was, and that if he could get it settled we would have plenty to do us the rest of our lives.

Q. He told you these glowing stories to induce you to go with him to New Mexico, did he not?

A. He never asked me to go with him to New Mexico, only to El Paso, near the border line.

Q. Aside from what your husband has told you and from what you have heard from others say, you have no knowledge of this reported grant, have you?

A. No, sir; I have not.

Q. Did you ever hear your husband say how many families were in that colony?

A. I have heard him say, but I do not remember. I will not attempt to try to say how many.

Q. Did you ever hear him say how long the colony remained in Mexico?

A. There was a part of them stayed there between two and three years.

Q. What became of the other party?

A. They came back to the States earlier than that.

Q. What machines, medicines, and implements of hus-

149 bandry did they take with them?

A. I do not remember hearing him say what particular things, only knowing they went down with such things as they could fix up to live and cultivate the land. Well, I have heard him say that his father said he carried out his part of the contract.

Q. But whether he did carry it out you do not know, do you?

A. I do not, except what he told me.

—. Who did your husband say drove these people out of the country?

A. The Mexicans, that were in authority at that time.

Q. Are you sure he said "authority"?

A. I am not sure that he said "authority."

Q. Of your own knowledge, you know nothing of any grant, title, or deeds of any colony formed by Dr. John G. Heath in Mexico?

A. No, sir; of my own personal knowledge I know nothing about it.

Q. What is your age?

A. Fifty years.

Q. Where do you live?

A. At Shreveport, Louisiana.

Q. Did you come up here for the purpose of testifying in this cause?

A. I did.

Q. Is there any reason why, if your expenses were paid, you could not go to Santa Fé, New Mexico, and testify before the court in this cause?

Objected to.

A. Well, my age would be one reason, and I have no brother or husband to go with me would be another reason. I wouldn't like to go that far without protection.

Q. Did you come up here alone?

A. I did.

Q. Mrs. Heath, here and in this neighborhood you have friends and relatives to visit with and stay with while here?

A. Yes.

Q. Do you have any relatives, friends, or acquaintances at Santa Fé, New Mexico?

A. No, sir.

Q. Did you ever travel much?

150 A. No, sir.

Q. You wouldn't like to attend court at Santa Fé by yourself?

A. I would not.

Q. When you said, in reply to the question asked by Mr. Harlan, that you would not say positively that the words "authorities" or officers of Mexico as used by your husband——

(Form of question objected to.)

What did he say as to the reason why they were not permitted to occupy the land?

A. Well, there was a change in the officers from the time the grant was given up to the time they went to possess it and they didn't want them to have the land.

Q. What officers or government do you refer to?

A. The Mexican government.

Q. If, as you say, there was a change in the government of officers about that time when did he say interfered with their occupying and cultivating this land?

A. Well, he said that the Mexicans wouldn't protect him in their grant. I remember that. They were forced to leave the country.

Q. Did or did he not assign as the reason for their not getting and occupying and cultivating the land a change in the government and officers and authorities of Mexico?

Objected to as leading—as being testimony of counsel instead of witness.

A. Well, that was his belief. He did say it was a change of the officers of the Mexican government.

Q. Mrs. Heath, what was the religious faith and to what church did Robert J. Heath belong?

A. He was a Catholic.

Q. Was he and his brother and sisters raised and educated as Catholics?

A. They were.

Q. Mrs. Heath, did you ever heard your husband say what was the Spanish of Dr. John G. Heath *and* which the Mexican grant was made? If so, what was the name?

A. I have heard him say that his father was called Juan Gid by the Spaniards.

151 Q. Was that his Mexican name?

A. Yes, sir.

Cross-examination:

Q. You say that the reason your husband and the colony was not permitted to occupy that land was that the Mexican authorities drove them off?

A. Yes, sir; that's the way I understand it and what my husband told me.

Q. Are you sure that he said authorities?

A. I am sure that he said the change of officers was the cause of it.

Q. Are you sure that he said that the change of officers was the cause of it or that he believed that the change of officers was the cause of it?

A. I wouldn't like to answer that right direct. I don't really know that he was sure of it or that he believed it. I know that he did believe that to be the cause of it.

Q. You say that Robert J. Heath was a Catholic?

A. I do.

Q. Did he observe all of the rites, ceremonies, etc., of the Catholic Church while you knew him?

Objected to as being immaterial and irrelevant as applied to the period in which she knew him for the reason that after New Mexico became part and parcel of the United States it makes no difference whether Robert J. Heath or other heirs of John G. Heath remained Catholics or not.

A. He did not, but he never joined any other church and died in that belief, so far as I know.

Q. Mrs. Heath, you have said that Robert J. Heath was a Catholic. How do you know that?

A. He told me so.

Q. When he told you so what period did he refer to?

A. The period when he told me. It was [illegible] when I asked the question.

Q. Was he following the dictates of his religion when he represented to you that he was unmarried?

To this we object for reasons above.

A. According to my belief, he was.

F. I. HEATH.

152 Subscribed and sworn to before me this 15th day of April, A. D. 1893.

THOS. J. POWELL,
Notary Public.

My term of office expires 6th of May, 1893.

EXHIBIT "G" FOR PETITIONERS.

JOHN B-ST, of lawful age, being produced, sworn, and examined on the part of the plaintiff-, deposeth and saith:

Q. State your name, age, and residence.

A. John Best; Montgomery county; near Montgomery City, Mo.; age, about 60 years old.

Q. Did you know Dr. John G. Heath?

A. Yes, sir.

Q. When and where did you know him?

A. I knew him when I was a little boy; at the mouth of the Gasconade river.

Q. Where did Mr. Heath live at that time?

A. He lived in Gasconade Co., at the mouth of the Gasconade river.

Q. Do you know when he died?

A. I could not say positively.

Q. Where did he die—in what country?

A. As well as I can fix up in my mind, he died in Cooper county, at *at* his salt mines in that country.

Q. Where is he buried?

A. My understanding, he was buried in Cooper county; right close to his salt mines. I can't say exactly.

Q. How many heirs did John G. Heath leave, and what were their names?

A. He left five or six; I believe five. The oldest was Robert J. Heath and Harriet. I think she married Sam. Gower. Then Eliza married —— Sherman. One named Ellen, it seems to me. There was one named Joseph; and the others I am not sure.

Q. Mr. Best, were not the heirs of John G. Heath Robert, Joseph, Harriet, Margaret, and Eliza?

A. Yes.

Q. Is Joseph dead, and did he marry and leave any children?

153 A. He is dead, and never was married, and left no children.

Q. Do you know anything about the Sherman family?

—. ——.

Q. Did you know Robert J. Heath?

A. Yes, sir.

Q. When did he leave the country?

A. It was during the war, the first part of the war. I don't remember exactly; about '62 or '63.

Q. Where did he go?

A. Into the Southern army.

Q. Did you ever see him since?

A. No, sir; I never saw him after he went away.

Q. Did he remain in the South?

A. I don't know whether he did or not; he never came back. I heard he remained in Shreveport, Louisiana.

Objected to as hearsay.

Q. Was Robert J. Heath married; and, if so, to whom?

A. He was married to Sarah Ann Dyer. She lived only a little while after he left and went into the army.

Q. Did he leave any family?

A. Yes, sir; he did. He left two children—Johnnie Heath, my sister's son, and Mrs. Eliza Bibb, the lady that was here.

I object to counsel putting words in the mouth of witness.

Q. Was the lady you referred to, Mrs. Bibb, the one that testified this morning?

A. She was.

Q. Is Johnnie Heath alive, and when did he die?

A. No, sir. I couldn't be positive about the year. I think he's been dead about 21 or 22 years.

Q. Was he married, and did he leave any children?

A. No; he wasn't married; he left no children. He was 18 years old when he died.

Q. Was Robert J. Heath married previous to the time that he married Ann Dyer?

A. He was.

154 Q. Who was his first wife, and is she dead; and, if so, when did she die?

A. She was my oldest sister; she is dead; I think she died just before '44.

Cross-examination:

Q. You say you knew Dr. Heath?

A. I did.

Q. You mean Dr. John G. Heath, do you?

A. Yes; I knew him.

Q. When did you know him?

A. I knew him from a little boy; been in his store a many a time.

Q. About what year was that?

A. I couldn't tell exactly; if I knew exactly how old I was I could tell you.

Q. About when was it?
A. I can't state definitely.
Q. Was it before 1823?
A. It was a good while after 1823.
Q. Tell us, Mr. Best, what you know about Dr. John G. Heath.
A. I was too young to remember much about him.

JOHN BEST.

Subscribed and sworn to before me this 15th day of April, A. D. 1893.

THOS. J. POWELL,
Notary Public.

My term of notarial office expires 6th of May, 1893.

ESTHER C. HUNTER, of lawful age, being produced, sworn, and examined on the part of the plaintiff-, deposeth and saith:

Q. Please state your name, age, and residence.
A. Esther C. Hunter; age, 49; New Florence, Mo.
Q. Are you a relative of Dr. John G. Heath; and, if so, what relative?
A. Granddaughter.
Q. Who was your mother; what relation did she bear to
155 Dr. John G. Heath?
A. Daughter of Dr. John G. Heath.
Q. Who was your father?
A. William Sherman.
Q. How many heirs, sons and daughters, had the said John Heath, and who were they?
A. Five.
Q. Give their names.
A. Robert J. Heath, Eliza, Harriet, Joe, Margaret.
Q. Did you ever see your grandfather, John G. Heath?
A. Yes, sir.
Q. Where was he living at that time?
A. Cooper county.
Q. Do you know when and where he died?
A. He died in Cooper county, near the Lamean river.
Q. Do you know where he was buried?
A. He was buried near the Lamean river, in Cooper county.
Q. Were you at his funeral?
A. I was.
Q. About what time did he die?
—. About 1850 or '51.
Q. Is Joseph living; and, if not, when and where did he die?
A. He died near the Gasconade, Gasconade county.
Q. When did he die?
A. About 1855.
Q. Was he a single man and did he leave any heirs?
A. He was single; he left no children.
Q. Who did Margaret Heath marry?

A. She married James Edsaw.
Q. Is she dead?
A. Yes.
Q. When did she die?
A. I don't believe I know; about '57 or '58.
Q. Did she leave any heirs?
A. None; no children, only brothers and sisters.
Q. Is her husband dead?
A. Yes.
156 Q. Did he die before she did?
A. He died after she did.
Q. Who did Harriet marry?
A. Samuel Guier.
Q. Is she dead, and when did she die?
A. She died about '56, I believe.
Q. Did she leave any children?
A. No, sir.
Q. When did her husband die; before or after she died?
A. He died before.
Q. Is your mother, Eliza, dead; and, if so, when did she die?
A. She is dead; died in 1863.
Q. How many heirs did she leave?
A. Six.
Q. Name them.
A. Sarah, Esther C., myself; Rebecca, Harriet, Adalaide, Robert Sherman.
Q. Give the full name of Rebecca.
A. Mary Rebecca Keedle.
Q. Are Harriet and Adalaide living?
A. No, sir.
Q. When—about how old were they when they died, and did they leave any children?
A. About 18 or 19, and left no children.
Q. Is Robert Sherman living, and is he one of the parties in this cause?
A. Yes.
Q. Who did Sarah marry?
A. William Scott.
Q. Is she living?
A. No.
Q. About what time did she die?
A. About '73.
Q. How many heirs did she leave?
A. Two.
Q. Are their names Charles W. Scott and Alice?
157 A. Yes.
Q. Is Charles W. Scott dead or living?
A. Dead.
Q. What heirs did he leave?
A. A widow and two or three children.
Q. Where do they live?

A. They live in Galesburg, Illinois.
Q. What is Alice's name?
A. Alice Woods.
Q. Where does she live?
A. Denver, Colorado.
Q. She is married since the bringing of this suit? What is her husband's name.
Q. Yes; I don't know her present husband's name.
Q. Were or were not these two the only heirs left by your sister Sarah Scott?
A. Yes.
Q. What religious faith or church did the said John G. Heath and his heirs and descendents all belong?
A. Catholics.
Q. To what church did your uncles and aunts all belong?
A. Catholic.
Q. And your mother?
A. The Catholic Church.
Q. Were you raised and educated as a Catholic?
A. Yes, sir.
Q. What school did you attend?
A. The Catholic convent at St. Charles, Missouri.
Q. What do you know, if anything, as to Dr. John G. Heath having in the year 1823 obtained a grant or tract of land from the Mexican government through the town council of El Paso, Mexico?
A. I heard my mother and uncle speak of it.
Q. Where was the grant located?
A. In Mexico, on the Rio Grande.
Q. Can you name any town near where it was located?
158 A. Near El Paso.
Q. Did you ever hear your mother or other heirs or parties claiming interest in the land talk about it; and, if so, what did she or either of th m say about the matter?

Objected to s hearsay.

A. I heard them say it was a large tract of land near El Paso. It was given to them by the Mexican government. I think they took a colony there and attempted to settle; was prevented by the change in government. The law under which our grant was given was repealed, they claimed.
Q. What was the reason assigned as to why they were not permitted to occupy and cultivate the land?
A. It was the new government.
Q. What else, if any other reason, or have you already given it?
A. I have given it.
Q. From the information obtained from your mother and uncle and grandfather, did they settle on this land. and, if not, why not?

Objected to as hearsay.

A. They attempted to, but was prevented by the Mexicans.
Q. When you say Mexicans what do you mean?

A. I mean the rulers and people in general.

Q. Did you ever hear your mother say about going with Dr. John G. Heath and a colony to New Mexico to make their home, to settle upon and cultivate this Mexican land grant?

Objected to as hearsay.

A. I have a many a time.

Q. Tell what she said.

Objected to as hearsay.

A. She said grandpa had spent quite a fortune in trying to colonize; she said they went by land and took everything that was needed for a colony.

Q. Was your mother along?

A. She was.

Q. Who else was along?

A. The whole family was along, and quite a number of other parties.

159 Q. How long did they remain down there?

A. I do not know.

Q. Did they stay upon the land; and, if not, why not?

A. They stayed a short time; was prevented by the government from staying there.

Q. What else did you hear them say, if anything, with regard to the threats?

A. He was forced to leave under penalty of the law, and had to flee for his life, and lost all he took there.

Q. What do you mean by "the penalty of the law"?

A. They threatened to put him to death; supposed that was the new government.

Q. Did or did not your uncle Robert J. Heath and your grandfather John G. Heath ever tell you the facts relative to this land grant and the attempt to occupy similar to what you have now testified as having been told you by your mother?

Objected to as leading.

A. I heard them speak of it.

Q. What, if anything, did your uncle Robert J. Heath and your grandfather John G. Heath ever tell you about this land grant?

Objected to as hearsay.

A. I have heard them speak of it.

Q. In what way?

A. I heard my uncle Robert speak of going over there with my grandfather.

Q. Did your mother ever talk to you about this matter, as you have stated above, in the presence of Robert J. Heath and Dr. John G. Heath?

A. I have heard my uncle talk about it to my mother.

Q. And your mother talk to him?

A. Yes.

Q. Have or have you not told us the substance of their conversations that they had together?

A. Yes.

Q. Was or was not what was told to you about this grant and the attempt to occupy it and cultivate the land by Robert J.

160 Heath or Dr. John G. Heath similar or different from what you have testified as coming from your mother?

A. It was similar to the same.

Q. Did or did you not ever hear your mother, uncle, and grandfather say that Dr. Heath took to Mexico and to this land all the colonist-, stores, implements, and in every way complied on their part with the conditions of the grant; and, if so——

Objected to as hearsay and leading.

A. I have.

Q. If anything, what did you ever hear your mother, father, and uncle say relative to complying with the contract on their part?

Objected to as hearsay.

A. I heard them say they had done all in their power to colonize it and were forced to leave.

Q. By whom?

A. By the new government.

Q. Have you ever seen the original title papers of this grant of land given to Dr. John G. Heath or do you know what has become of them?

A. I have never seen them; do not know what became of them.

Cross-examination:

Q. Mrs. Hunter, have you an interest in this claim?

A. I have.

Q. You are a granddaughter of Dr. John G. Heath, are you?

A. I am.

Q. Have you ever seen the Doctor?

A. I have.

Q. How old were you when the Doctor died?

A. About five years old.

Q. Was the Doctor then living at your house?

A. No, sir.

Q. Were you living with him?

A. No.

Q. Did you reside in the same town with him?

A. The same county.

Q. How often did you see the Doctor?

161 A. A number of times.

Q. Well, about how often—once a week, a month, or once a year?

A. Sev-ral times a year.

Q. Did he ever talk to you about this grant?

A. He talked to my mother.

Q. Then the testimony that you have given relative to what Dr.

John G. Heath said about this land is what you heard him tell to somebody else, is it?

A. Yes.

Q. How long had Dr. John G. Heath resided in the State of Missouri immediately prior to his death?

A. I do not know.

Q. About how long?

A. I cannot say.

Q. Was it a year, five years, ten years, or more?

A. It was before I could remember.

Q. Did you ever hear anybody say how long he had lived in Missouri prior to his death?

A. No.

Q. What were the circumstances that led to Dr. Heath's going to Mexico?

A. Purpose of getting land, I heard them say.

Q. Was Dr. Heath a native-born American?

A. He was not.

Q. What was his nationality?

A A German.

Q. What age was he when he came to this country?

A. I do not know.

Q. Did you ever hear any one say?

A. No.

Q. Do you know his age at the time he went to Mexico?

A. No.

Q. How many times did he go to Mexico?

—. Went several times—twice or three times, I believe.

Q. When was the first time he went?

A. Don't know.

162 Q. Do you know how long he stayed?

A. No.

Q. Was he a resident of the State of Missouri before he went to Mexico?

A. He was.

Q. What was his business before he went to Mexico?

Objected to as not a proper subject of cross-examination, being relative of facts long prior to her birth, about which she did not attempt to testify.

A. Do not know.

Q. Did Dr. Heath go to Mexico each time for the purpose of obtaining land?

A. He did.

Q. How many grants did he obtain?

A. Only one that I've ever heard spoken of.

Q. In what year did he obtain this grant that you speak of?

A. In '23 or '24.

Q. Upon what information do you base that conclusion?

A. I have heard my mother and uncle and aunts all speak of it.

Q. Did you ever hear your mother, uncle, grandfather, or aunts say what were the conditions upon which that land could be granted?

Objected to as irrelevant, immaterial, and incompetent.

A. They were to colonize it, inhabit it, and make it their home.

Q. How many families were to be taken there for the purpose of this colony?

A. There was a number of them; don't know how many.

Q. How many families did they actually take?

A. I don't know.

Q. Did you ever hear any one say?

A. I have heard my mother and uncle say there were quite a number. I never heard the exact number.

Q. How much land was your grandfather to receive for the purposes of this colony?

Objected to as irrelevant, immaterial, and incompetent. The grant speaks for itself.

A. Do not know.

Q. Did you ever hear any one give a description of that land?

A. I have heard it spoken of.

163 Q. What kind of land was it described to be?

A. I don't know that I ever heard them say.

Q. Did you ever hear any one say what that land was called?

A. It was called the Heath land grant.

Q. Did you ever hear what the Mexicans called it?

A. I never did.

Q. Do you know anything about the landmarks on that land?

A. I do not.

Q. Did you ever hear any one say how much land there was in the tract?

A. I heard how much, but I don't remember.

Q. You say you have heard your mother speak of the land?

A. Yes, sir.

Q. Was she ever there?

A. She was.

Q. When?

A. '23, I guess.

Q. Who did she go with, and how did she happen to go?

A. She went with my grandfather; they moved out there.

Q. Did your mother ever talk directly to you about this land?

A. She did.

Q. How long since?

A. It's been about 35 years.

Q. How old was you at that time?

A. I don't know how old I was; I am 49.

Q. How old was your mother at that time?

A. I don't know.

Q. Was she an old woman?

A. No; she was not very old.

Q. Did any one ever tell you for a certainty that Dr. Heath and

his colony were prevented from settling on that land or disturbed in the possession thereof by the authorities or officers of the Mexican government?

A. I heard my mother and aunt and uncle speak of it.

Q. Now, wasn't it just a mere matter of belief among them that they were prevented by the Mexican government from taking possession?

Objected to as asking her conclusions and not a statement of the facts or what was said to her.

164 A. It was not a belief.

Q. Now, do you mean to state upon your oath that any of these parties told you that the authorities or officers of the Mexican government prevented them from settling upon that land?

A. They did.

Q. In answer to a former question you say that your grandfather and the families that attended him were prevented from settling upon that land by the Mexicans. How do you know they were Mexicans?

A. They were the natives of Mexico.

Q. Did they ever say anything about any Indians in that country?

A. They did not.

Q. What particular officer was it that compelled these people to leave?

A. I never heard his name called. If I have I don't remember it.

Q. Who ordered them out?

A. The governor.

Q. The governor of what?

A. Mexico.

Q. How do you know it was the governor?

A. I have heard grandfather say so.

Q. You are sure you are right, are you?

A. Yes.

Q. How old was your mother when she went to Mexico with that colony?

A. Do not know.

Q. Where did those families come from that accompanied Dr. Heath on his expedition?

A. Cooper Co., Missouri.

Q. What became of those people that went down there?

A. I do not know.

Q. How long did they stay?

A. About a year or two.

Q. What did Dr. Heath do after he came to Missouri?

A. He farmed and made salt, I think.

Q. Did he return to Missouri immediately after he left Mexico?

A. He did.

Q. Did he bring his family with him, including your mother?

A. Yes.

165 Q. Was your mother married at that time?
A. No.
Q. How old was she?
A. Do not know.
Q. Did your mother ever tell you how old she was when she went to Mexico?
A. She did, but I don't remember.
Q. How is it, then, that you remember that your grandfather told you when you were less than five years old that it was the governor of Mexico that drove him off that land when you don't remember about how old your mother was when she was in Mexico?
A. My mother told me her age, but I don't remember.
Q. Was the information that you derived from your grandfather, your mother, and others concerning this land the same?
A. It was.
Q. Did they all say that it was the governor of Mexico that prevented them from settling on that land?
A. Yes.
Q. Did they all say that Dr. Heath took machines, agricultural implements, tools, and established in Mexico and upon this land in question, manufacturing establishments, warehouses, and a gunpowder factory?
A. They had everything that was essential to the colony, they claimed.
Q. Well, do you know what they did have?
A. I do not know what they did have. They had farming implements—stock of all kinds.
Q. What they did actually have, coming down to particulars, they never told you, did they?
A. I heard them speak of provisions and stocks of all kinds.
Q. Is there any reason why, if your expenses were paid, that you could not go to Santa Fé, New Mexico, and testify in this cause before the court?
A. I have a family, but can't very well go.
Q. Have you any small children in your family?
A. Yes; I have two.

166 Redirect:

Q. Did you mean to say or did you make a mistake when you said that Dr. Heath was not an American-born citizen?
A. I made a mistake. He is a Pennsylvania German. (Where I have said governor in this deposition I meant to say government.)

This connection is objected — by defendants.

ESTHER C. HUNTER, *Witness.*

Subscribed and sworn to before me this 15th day of April, A. D. 1893.

THOS. J. POWELL,
Notary Public.

My term of office expires 6th of May, 1893.

I, Thomas J. Powell, notary public within and for the county of Montgomery, in the State of Missouri, do certify that in pursuance of the within and annexed commission and notice came before me, at my office, in the town of New Florence, in the county and State last aforesaid, Eliza J. Bibb, Frances I. Heath, John Best, and Esther C. Hunter, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examination reduced to writing and subscribed by them respectively in my presence on the day and between the hours and at the place in that behalf first aforesaid, and their said depositions are now herewith returned.

And I further certify that Eliza J. Bibb, Esther C. Hunter, and John Best are residents of the county of Montgomery aforesaid, in the said State of Missouri.

Given at New Florence, in the county of Montgomery and State of Missouri, this 15th day of April, 1893.

THOS. J. POWELL,
Notary Public.

My commission expires 6th day of May, 1893.

167 EXHIBIT G FOR PLAINTIFFS.

Deposition of witness taken before me, W. F. Button, a notary public, to be used in an action wherein J. B. Cessna *et al. is* plaintiff- and The United States of America and The Unknown Owners of the Dona Ana Bend Colony Grant, The Mesills Colony Grant, and The Bracito Grant *is* defendant-, pending in the court of private land claims, sitting at the city of Santa Fé, New Mexico, in pursuance of the annexed order, after 10 days' notice to the Hon. Matt. G. Reynolds, attorney for the United States, and consent, as shown by letters hereto atttached, marked Exhibit (B) and (C), on July 7th, at the time therein stated, and at the office of Charles H. Tanner, U. S. commissioner, he being absent in New York, and I being a clerk and notary public in his office.

JOHN B. KEEDLE was produced as a witness on the part of plaintiff-, who, being by me first duly sworn, in answer to the interrogatories propounded, testified as follows:

Interrogatory 1. State your name, age, and residence.

Answer. John B. Keedle; forty-three years of age; Hastings, Nebraska.

Interrogatory 2. Who is your wife and what was her maiden name and when were you married?

Answer. Mary R. Keedle; her maiden name was Mary R. Sherman; were married at Monmouth, Illinois, on the 15th day of April, 1879.

Interrogatory 3. What relationship does she bear, if any, to Dr. John G. Heath, deceased?

Answer. She is his granddaughter, being a daughter of Dr. John G. Heath's daughter Eliza, who married William Sherman.

Interrogatory 4. What, if anything, do you know as to the claim or assertion of ownership by the heirs of said Dr. John G. Heath in and to a tract of land granted by the Mexican government, through the town council of El Paso, Mexico, to said Heath, in 1823?

Answer. I know that they have always told me that Dr. John G. Heath owned land in Mexico, near El Paso, Texas. We have had for many years a certified copy of the grant which was taken from the records of the United States land office at Santa Fé, Mexico.

Interrogatory 5. What have you ever heard, if anything, from the heirs and descendants of Dr. John G. Heath as to Robert
168 J. Heath and Eliza Heath having, in 1823 or 1824, gone with their father, Dr. John G. Heath aforesaid, and a colony, to settle upon a tract of land granted to Dr. John G. Heath by the Mexican government, through the town council of El Paso, Mexico, 1823, and, if anything, what did they say or claim as to said expedition?

Answer. I have heard the heirs of Dr. John G. Heath say that they went there in 1823 or 1824, with a colony of some thirty families or more, and when they went to the land there had been a revolution in that country, and they were told by the authorities there that the laws had been changed and that they would not allow Heath to stay on his land. He made repeated and continued applications to the town council and other authorities in Mexico to allow him to remain upon his land and cultivate the same, to all of which the authorities refused, and he was finally compelled to leave the country under threat of death or imprisonment for life. He had remained there for two years or more, trying to gain possession of his land. One of the reasons which the authorities gave for not letting him stay upon the land was that the law of 1823 had been repealed, this being the law under which the grant was given. Eliza Heath and Robert J. Heath went with their father to this land.

Robert J. Heath, Eliza Heath, and others who went with the colony have always told me that Dr. John G. Heath did everything to comply with the conditions of the grant. He took all the provisions, printing press, and in fact everything which he had agreed to take, and in every way and manner complied with his part of the agreement according to its terms.

Immediately after the grant was made he returned to the United States to prepare for the expedition. He returned within a year. He went ready and willing to do all he had agreed to do. He remained there, trying to occupy and cultivate the land, but this they would not allow him to do, and he was compelled to leave within a certain time under a threat of death or imprisonment for life, coming back to the United States financially ruined, the expedition having cost him $80,000. He finally died in Missouri broken-hearted, it is said, never having fully recovered from the losses sustained in this expedition.

169 It has always been claimed by Dr. John G. Heath and his heirs that he held a large estate in Mexico, and this has been of general repute in Missouri, where the Heaths have lived.

Interrogatory 6. From what they said did Heath and the parties with him go to Mexico in 1823 or 1824, and did they occupy and cultivate the land within two years from the date of the grant; and, if not, why not?

Answer. They did go in 1823 or 1824, and when they got there the revolutionary government (the parties then in power after the death of the Emperor) would not allow Heath and his families to remain on the land and cultivate it, claiming to Heath that the laws had been repealed as the reason that they would not allow him to do so.

The town council at El Paso notified Heath that he could not remain and that he must leave the country or suffer the consequences, which would be death or imprisonment for life, and he was not to return under threats of like punishment, and he was afterwards afraid to do so. These are the facts as I have obtained them from the heirs of Dr. John G. Heath.

Interrogatory 7. Did you ever see an affidavit of Robert J. Heath relative to this land grant, the expedition; and, if so, has the original been lost and have you a copy of the same? If so, add a copy to your deposition.

Answer. I did see an original affidavit relative to his going to Mexico in 1823 or 1824, in company with his father and others. It was shown to me by E. Parmer or R. H. Mansfield, they having charge of this case at that time (in 1882 or 1883). I knew it was genuine from the signature and it was acknowledged before the clerk of the court at Shreveport, Louisiana, and that the same bore his official seal, the same being clearly marked thereon. I have a true and certified copy by E. Parmer, of St. Louis, Missouri. I know that this is a true copy of the original.

The original has been lost. We have repeatedly tried to find it. The last we heard of it, it was sent to Mr. Jones, who was then interested in the case as an attorney. Jones has been dead for
170 some years. After repeated efforts this paper cannot be found among the papers of Mr. Jones.

A true copy of this affidavit is hereto handed you to be made a part of my evidence and marked Exhibit (A).

Inter-ogatory 8. What else, if anything, of importance in this case do you know? Please state the same fully as though particularly interrogated.

Answer. I have made repeated and continued efforts to try and find some one who went with Heath and his colony, but at this late day it is impossible to find living witnesses who have personal knowledge of the making of the grant and what Heath did in his efforts to occupy and hold this land and why he was driven from the same.

(Signed) JOHN B. KEEDLE.

I, W. F. Button, a notary public within and for the county of Adams, in the State of Nebraska, do hereby certify that the above-named John B. Keedle, witness, whose name is subscribed in the foregoing deposition, was by me first duly sworn to testify to the

truth, the whole truth, and nothing but the truth ; that the foregoing deposition by him subscribed was reduced to writing by me and was by said witness subscribed in my presence and was taken at the time and place specified in the order hereto attached, and the taking of said deposition was done on the 7th day of July, 1893.

W. F. BUTTON,
Notary Public.

EXHIBIT (A).

STATE OF LOUISIANA, }
Parish of Caddo. }

Copy of the Affidavit of R. J. Heath.

Before the undersigned authority personally appeared R. J. Heath, who, being by me first duly sworn according to law, deposes and says that he is 67 years of age and a resident of Shreveport, Caddo parish, Louisiana ; that he is a son of John G. Heath,
171 deceased ; that some time in the year 1822 his said father became the owner, through the government of Mexico, of a colony grant of land located in the province of New Mexico, said grant being known as the Bracito grant, the center of which is on a small island in the Rio Grande river 30 miles, more or less, above El Paso, Texas, and measuring five leagues in length and five leagues in breadth. Affiant further says that the grantee, his father, stipulated in said grant to colonize the land with American citizens; that the grantee thereupon returned to the United States; that he organized a company of colonists, in accordance with the provisions aforesaid, composed of families, mechanics, artizens, and farmers, and that he also employed a printer and purchased a printing press, also a large quantity of agricultural implements and machinery and all necessary supplies and paraphernalia for the needs of a colony, and that with this colony and material aforesaid he crossed the boundary of the United States, passed into Mexico, and reached the port of Soto La Merene.

That affiant was one of the party, and that after the arrival at said place the Emperor Iturbide was put to death, when the country was thrown into a state of revolution. He further says that the Mexican government as then organized refused to permit the said grantee and his colonists to occupy said grant of land ; that said grantee and his colonists remained in the country for a long time, ready and anxious to occupy and improve said grant, and declared to the authorities their desire to occupy the same ; that they demanded possession and insisted upon carrying out the provisions and stipulations as aforesaid contained in the said grant or conveyance ; that they waited there through three years in the hope that the Mexican government would accede to them the rights they had acquired to take possession of and hold the land aforesaid, and that at the end of that time the authorities of the government of Mexico ordered them to leave the country under pain of imprisonment,

and they were compelled and forced by reason of such order to quit the territory of Mexico and return to the United States.

Affiant further says that the grantee, his father, and his colonists during their stay in Mexico in the attempt to locate upon said
172 land were persecuted and threatened and the grantee was robbed of all his property by the peop-e of that government, and that the property so taken from him amounted to a sum not less than $80,000 (eighty thousand dollars). Affiant says he was with the said expedition all the time it remained in Mexico, his personal knowledge of all the facts stated in this affidavit, and that the same are true in every particular.

R. J. HEATH.

Sworn to and subscribed before me on this 19th day of May, 1882, at Shreveport, State of Louisiana. In testimony whereof I have hereunto set my hand and affixed the seal of the court.

[SEAL.] W. P. FORD, *Clerk.*

I certify that the foregoing is a true copy of the said affidavit of R. J. Heath; that I wrote it out from the original in order that I might send the original to Mr. Jones, at Seneca, Missouri. In testimony whereof I have hereto set my hand and affixed my notarial seal, at office, in St. Louis, Missouri, this 19th day of May, 1883.

ENRRIQUE PARMER.

I certify that the foregoing is a true copy of the copy of the said affidavit of R. J. Heath as written by Mr. Enrrique Parmer, of St. Louis, Missouri, and that the same was duly compared by me this 7th day of July, 1893. In testimony whereof I have hereunto set my hand and affixed my official seal this 7th day of July, 1893.

W. F. BUTTON,
Notary Public.

173 EXHIBIT H FOR PLAINTIFFS.

Depositions of witnesses taken before me, Charles H. Tanner, United States commissioner in and for the district of Nebraska, United States of America, in an action now pending in the court of private land claims at Santa Fé, New Mexico, wherein J. B. Cessna *et al.* are plaintiffs and The United States is defendant, case No. 59, in pursuance of the annexed commission and at the time and place therein stated, depositions taken upon the interrogations and cross-interrogations hereto attached.

Said plaintiff- produced the following witnesses in their order, to wit:

MARY R. KEEDLE, who, being by me first duly sworn, testified as follows:

Q. State your name, age, and residence.

A. My name is Mary R. Keedle; I am 45 years of age, and I reside in Hastings, Nebraska.

Q. Are you a relative of Dr. John G. Heath; and, if so, what relation?

A. I am a granddaughter.

Q. Who was your mother, and what relationship did she bear to Dr. John G. Heath?

A. She was Eliza Heath; she married William Sherman; she was a daughter of Dr. John G. Heath.

Q. How many heirs, sons and daughters, had the said John G. Heath, and who were they, if you know?

A. There were five—Robert Heath, son of Dr. John G. Heath; Eliza Heath, daughter of Dr. John G. Heath; Margaret Heath, daughter of Dr. John G. Heath; Joseph Heath, son of Dr. John G. Heath; Harriet Heath, daughter of Dr. John G. Heath. These parties are all dead. Eliza Heath had six children—Mary R. Keedle, Esther C. Hunter, Harriet and Adalaid, Sarah Scott, and Robert Sherman. Harriet and Adelaid died at the age of seventeen and thirteen without heirs. My sister, Sarah Scott, is dead, and left Charles W. Scott and Alice Woods. Charles W. Scott is dead, but left two children living and his winow. His widow's name is Alice M. Scott and the children's names are Lily E. Scott and Lucretia Scott.

Q. Where is said Dr. John G. Heath buried; were you ever at his grave; and, if so, who took you to it?

A. Over on the La Mine river, near Boonville, Cooper
174 county, Missouri. I was there once; taken there by my mother and father.

Q. Did your mother, Eliza Sherman, leave a will?

A. No.

Q. What do you know, if anything, as to Dr. John G. Heath's having in the year 1823 obtained a grant or tract from the Mexican government through the town council of El Paso, Mexico?

A. I have heard him say so many a time.

Q. Where was this grant located?

A. It is located near *located near* El Paso, Texas, but I do not know exactly where the grant is.

Q. Did you ever hear your mother or other heirs and parties claiming interests in said land talk about it; and, if so, what did she or either of them say about the matter?

A. Yes, sir; many a time. She said that they had a land grant down there, and she did not know but what they could get it some time. Heath took a lot of colonist- there to settle the land, and finally when he got there they were driven off the land by the Mexican authorities—the grantors. There was a revolution in the country, the Emperor had been shot, and they were compelled to leave the country under penalty of death.

Q. What, if anything, did you ever hear your mother say as to having gone with her father, Dr. John G. Heath, in a colony to Mexico in 1823 or 1824 to settle and occupy this grant or tract of land above referred to?

A. She told me that she had gone. She said that they made

baskets and put one in one and — the other basket and swung them over a mule and rode along in that way.

Q. From the information obtained from your mother did they settle on the land; and, if not, why not?

A. I don't know whether they ever settled on it or not, but they were driven off it. They went on the land, but were driven off by the authorities of the Mexican government after the revolution. They staid there two years with unsuccessful attempts to cultivate their lands and made repeated applications to the authorities to allow them to stay there, but they were refused. They stole their horses and cattle and reduced the expedition to poverty, and
175 my grandfather, Dr. Heath, never recovered and was ruined financially. I know this by hearing my mother and uncle, Robert Heath, and grandfather talk about it.

Q. Did you ever hear your uncle, Robert Heath, speak of this grant; and, if so, what did he say in relation to it?

A. I have, and about the same that I have given in my last answer.

Q. What, if anything, did you ever hear Robert J. Heath say as to his having gone with his father and a colony to Mexico in 1823 or 1824 to occupy and cultivate the land granted to Dr. Heath by the town council of El Paso, Mexico, and what, if anything, did he say as to the actions of the grantor and the government of Mexico, whether the said colonists and your uncle were permitted or not permitted to remain upon the land granted and in the country?

A. I have heard him say that he went with his father to Mexico in 1823 or 1824, and they were not permitted to remain upon the land, but were driven therefrom.

Q. What religious faith or church did said Dr. John G. Heath and his heirs and descendents belong to?

A. They were Catholics.

Q. In what religious faith were you and the other relatives of said Dr. John G. Heath raised and educated?

A. Catholics.

Q. Have you ever seen the original title papers of this grant of land given to Dr. John G. Heath or do you know what has become of them?

A. I have not and do not know.

Q. What else, if anything, of importance in this case do you know pertaining to the case? Please state the same as though particularly interrogated.

A. I know that Dr. Heath spent a large amount of money in the expedition. I have heard them say it was something like $75,000.00. He staid there about a year more than his wife. He sent his wife back after he had been there about a year, and he was finally ordered to leave under penalty of death—that is, being shot within a certain time if he didn't leave. I frequently heard Robert J. Heath and my mother say that Dr. John G. Heath took to Mexico and to this land all the colony stores, implements, and everything
176 necessary to establish the colony, and in everything on his part complied with the conditions of the grant.

Cross-interrogatories:

Q. Did you ever have any personal acquaintance with Dr. John G. Heath; if so, when did you first see him and when did you last see him?

A. Yes, sir; I have seen Dr. Heath when I was quite young. I don't remember when first I saw him or when last I saw him.

Q. Do you know whether he ever came to New Mexico of your own personal knowledge, or is your information in that respect what you have been told by others?

A. All I know of his going to Mexico is what I have heard my mother and uncle and other relatives of Dr. John G. Heath talk over in my presence.

Q. Is your testimony with reference to the will of Dr. Heath based upon your own personal knowledge of the fact or based upon what you have been told by others?

A. What I have been told by others—that is, my mother and uncle.

Q. How do you know that the parties named by you are the living heirs and descendents of Dr. John G. Heath—are the only heirs-at-law at the time of his death?

A. Simply what I have been told by my uncles, aunts, and by my mother.

Q. Were you ever in New Mexico, and did you ever see any of the property claimed in this suit?

A. No, sir.

Q. Is your knowledge and statement as to Dr. John G. Heath's having obtained a grant for land in New Mexico derived from what you have been told by others; if not, what is your specific source of information? And state fully what you have personal knowledge of and how you happened to obtain it; make your answer full.

A. I have no personal knowledge of what Dr. John G. Heath did relative to the grant of land in New Mexico; my information, such as I have, is solely from conversations that I have had and overheard of my mother and Robert Heath and the children and relatives of Dr. John G. Heath.

Q. Where were you taken and by whom and shown what is claimed to be the grave of Dr. John G. Heath, and when was he buried at that point?

177 A. I think I was taken to his grave in 1851 or 1852 by my father and mother. I remember the fact distinctly, as we drove in a wagon with white canvas top. As to when he was buried, I don't remember the exact time.

Q. Is not your knowledge of the location of the grant claimed based alone from what you have been told by others?

A. Yes, sir.

Q. If your mother told you she had been to New Mexico with Dr. Heath, when did she first go there and how long did she stay and when did she return; was she ever in New Mexico more than once?

A. She told me she first went there in 1823 or 1824; that she remained one year, at which time she returned, leaving Dr. John G.

Heath. He came back about a year thereafter. She never claimed to have been in New Mexico more than the one time.

Q. Why did she leave New Mexico and come back to the States?

A. I do not know except as answered in previous answers.

Q. Who was Robert J. Heath, and is he living or dead; if not living, when and where did he die?

A. Robert J. Heath was the son of Dr. John G. Heath; he is now dead; he died in San Antonio, Texas, in 1886.

Q. As a matter of fact, all you know about this matter is what you have been told about it by others, is it not?

A. As to the grant and in fact all things that he did relative to the grant, my only knowledge to that is what has been told me by my mother, Robert J. Heath, and the other children. As to having met Dr. John G. Heath and as to going to his grave and as to the place where he is buried and as to Robert J. Heath's being dead and as to the heirs and relatives of Dr. John G. Heath, I know of my personal knowledge, but as to the grant, all I know of it is what I have been told by persons who claimed to know.

Q. You do not pretend to have any personal knowledge of the existence of this grant or its location, boundaries, area, or occupation, do you? If you answer "yes," what personal knowledge have you, when did you obtain it, under what circumstances did you receive it, and where?

A. I have no personal knowledge of the existence of this grant or its location, its boundaries, its area, or occupation.

178 Q. All you know of the religious faith of Dr. John G. Heath is what you have heard others say, is it not?

A. Yes, sir. But I know furthermore that all his children were Catholics, and all of his children and I myself was educated at St. Charles Catholic convent, Missouri.

Q. Did you ever see as a matter of fact the alleged original title papers to this grant; and, if so, in whose possession were they at the time you saw them and where were they? If you saw them did you read them? How many papers were there and whose names were signed to them? Can you read or write Spanish? Can you speak Spanish?

A. I never saw what purported to be the alleged title papers to this grant or any other paper relating to the grant until copies were shown me by my husband, John B. Keedle, some time in 1882, I think. I don't remember how many papers there were or whose name was signed to them. I cannot read or speak Spanish.

Q. If you saw what purported to be the original title papers to this grant or any other grant, how did you happen to see them?

A. They were shown to me by my husband some time in 1882 or 1883 through Judge O'Neil, from Chicago. At least, that is what my husband showed me.

MARY R. KEEDLE.

Witness:
S. W. KEEDLE.

I, Charles H. Tanner, United States commissioner within and for the district of Nebraska, United States of America, do hereby certify that Mary R. Keedle was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by her set forth were reduced to writing by M. A. Martigan, Jr., who is not interested in the suit, in my presence and in the presence of the witness, and were respectively subscribed by the said witness in my presence, and *was* taken at the time and place in the annexed notice specified, and that I am not counsel, attorney, or relative of either party or otherwise interested in the result of this suit, and said depositions were commenced at the time in said notice specified and continued by adjournments from time to time as above specified.

CHARLES H. TANNER,
United States Commissioner for the District of Nebraska.

179 UNITED STATES OF AMERICA:

I hereto attach interrogatories direct and cross-interrogatories which accompanied commission, interrogatories marked "Exhibit One."

Fees for taking deposition, $7.50, paid by plaintiff J. B. Cessna.

C. H. TANNER,
U. S. Commissioner.

180 EXHIBIT I FOR PLAINTIFFS.

In the Court of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
v.
UNITED STATES *et al.*

Deposition of Maj. Horatio H. Hughes, of New Franklin, Mo., taken by me, a notary public in and for the county of Howard, Mo., upon interrogations.

Maj. HORATIO H. HUGHES, being first duly sworn, testifies as follows:

Interrogatory 1. State your name, age, and residence.

Answer. My name is Horatio H. Hughes; age, eighty-two; reside in New Franklin, Howard Co., Mo. I have lived in Howard county, Mo., since 1820, except when temporar-y absent in the army.

Interrogatory 2. Did you know Dr. John G. Heath in 1822, 1823, and 1824, and subsequently?

Answer. I did. I was then living on my father's farm three miles from what is now known as the town of New Franklin and five miles from Franklin, a town and landing there on the Missouri river, just opposite where Boonville was subsequently located. I met and saw Dr. John G. Heath there and at my father's house a number of times

in the twenties. Franklin was subsequently swept away by a flood, and New Franklin started some two or three miles away.

Interrogatory 3. What, if anything, do you know as to Dr. John G. Heath going to Mexico in 1822; and, if he went, when did he return and for what purpose?

Answer. Dr. John G. Heath went to Mexico in 1821 or
181 1822; returned in 1823 or in 1824 for the purpose of getting up a company to go with him to Mexico to settle upon and establish a colony on a tract of land near El Paso that was granted to him by the Mexican government.

Interrogatory 4. Please state fully what you know, if anything, of Heath's colony and their going to Mexico in 1824.

Answer. Dr. John G. Heath was here the latter part of the yaer 1823, and I think the company left for Mexico in the spring or summer of 1824. There were in the company one hundred or one hundred and fifty persons, men, women, and children; believe there were over thirty different families; they had five or six flat-boats, upon which they went down the river. Ascending, to my recollection, they had a printing press, medicines, stores of all kinds, farm implements, machinery for making of clothing, and other machinery suitable to that age. I remember hawling and selling them a load of flower.

My father at that time owned a mill and distillery, and I took a load of flour and sold it to Dr. John G. Heath in 1824, just before he started with his colony to Mexico. They told me at that time they were going to Mexico to settle or colonize a tract of land granted to Heath on the Rio Grande river, near El Paso, Mexico. I saw their preparations and knew of them getting ready, but all I know of where they went and the object of their going was what Dr. Heath and others of the company told me; what they had and took along with them would start and support a go-d-sized colony; from the preparations I saw and what they said at the time, they evidently intended to settle, remain, and become citizens of Mexico, and to occupy and cultivate the land granted to Heath.

Interrogatory 5. Please state fully what, if anything, they told you at the time of their going relative to establishing their dimicile or home in Mexico.

Answer. They said a tract of land was granted to Heath, and he was to settle a number of families upon it and cultivate the land, and that they were going there for that purpose—to carry out Heath's contract. This I got from Dr. John G. Heath and parties of his company.

182 Interrogatory 6. At that time what acquaintance, if any, had you with Arthur Sherman, William Stewart, and Moses Heath; and, if so, did or did not they or either of them go with Dr. John G. Heath's colony to Mexico?

Answer. I did know them, but I do not remember if Stewart's name was William or not; these parties went with Dr. Heath's colony or company.

Interrogatory 7. What relation, if any, was Moses Heath to Dr. John G. Heath?

Answer. They were brothers.

Interrogatory 8. Did or did not Dr. John G. Heath and others of his colony return; and, if so, when?

Answer. Dr. John G. Heath and some others, who went with him to Mexico, returned in a year or so.

Interrogatory 9. When they returned what, if anything, did Dr. John G. Heath and others of his party tell you as to the reason they did return and did not remain in Mexico?

Answer. They said when they got to Mexico there had been trouble and the revolutionary forces had been successful in overthrowing Iterbidie's government, under which the grant to Heath had been made, and that the revolutionary government would not let them occupy and cultivate the land granted to Heath, would not let them remain and settle there, and drove them off under the penalty of imprisonment or death; that this Government, as then organized, tried to undo all that had been done under Iterbidie's reign, and that they claimed the law under which the grant had been made was repealed, and that they would not let them occupy and cultivate the land or remain and become citizens; that
183 they stayed there during part of the years 1824 and 1825, and did all on their part to fulfill Heath's contract, but the authorities then in power would not let them remain. They returned without any property and said that everything had been taken from them in their driving of Heath and his party out of the country.

They further said that on account of the treatment by the Mexican authorities, as then existing after the revolution and representing the same authority that had previously made the grant, it was impossible for them to remain in Mexico and occupy this land, and for this reason they left.

Interrogatory 10. From what you knew and saw at the time of the preparations for their journey and what you learned subsequently as to similar voyages, what do you say was the cost and expense of Heath's colony and expedition?

Answer. It must have cost him over sixty or seventy thousand dollars. I partly judge of this for the reason that some time after this date, as an officer, I shipped and went with companies and regiments of soldiers to Florida and Mexico; also shipped loads of horses to same points.

Interrogatory 11. Were you ever on this bracito or tract of land in the Rio Grande river some forty miles northwest of El Paso, granted to Dr. John G. Heath; and, if so, when and what were the circumstances?

Answer. In 1846 and 1847 we fought a battle on the bracito tract of land. I was at the time captain in Colonel Donaphan's regiment of Missouri volunteers. We had a fight with the Mexicans here and drove them back into El Paso and from there to Chauwau.

Interrogatory 12. What further do you know relative to this grant to Dr. John G. Heath or his colony? If anything of benefit to this case, please state the same as though particularly interrogated.

184 Ans. I have lived in this county since I came here in 1829. Farming has been my general occupation; sold my farm some years ago and now live in the town of New Franklin. As I was too old to work and look after my farm, thought the interest on the money was better for me. I am a stockholder in the Bank of New Franklin. I have been in the army frequently. I was in the Iowa war. Then went as major to Florida in 1836 & '7; was captain in the Mexican war in 1846 and '7 and last four years major in the war of the rebellion.

Ever since 1821 I knew Dr. John G. Heath. He was a friend and acquaintance of my father. Before Heath went to Mexico he was said to own considerable land in different counties and was regarded as a man of considerable means for that time; was quite wealthy; Heath's family—wife and several children—went with him to Mexico. After he returned from Mexico the second time Heath was more or less in this and adjoining counties. He used to own and be in possession of the Salt Spring wells near the line of Cooper and Saline counties. I think Dr. John G. Heath died in 1851 or '52 and is buried on the Lamino river, Cooper Co., Mo.

I further state that after we returned from the Mexican war, in 1847, Dr. John G. Heath and myself often talked of the battle of the Bracito, and he claimed the land there where the battle was fought belonged to him.

That it had been granted to him by the Mexican government under Iturbide; that the revolutionary authorities that overthrew his government drove them off and would not let them settle on the land on account of their hostility to everything during Iturbide's reign.

At all times he claimed this land, saying that he had fulfilled his part of the contract; that they went there to settle, locate, and make Mexico their home, but that they were wrongfully driven out; being financially ruined, returned to the United States, and that he hoped one day to be able to reclaim and get back his land.

HORATIO H. HUGHES.

185 Subscribed and sworn to before me on the day, at the place, and within *in* the hours first aforesaid.

E. E. DUNAWAY,
Notary Public.

186 J. B. CESSNA *et al.* *vs.* UNITED STATES *et al.* } No. —.

Cross-interrogatories to be Propounded to Horatio H. Hughes.

1. Have you any personal knowledge of the facts about which you have testified? If so, how did you happen to obtain it?

Ans. What I have stated in my chief examination is from personal knowledge, except what is there stated or indicated to otherwise. I got these facts from observation, seeing and knowing them when they occurred just as I have stated.

2. If your knowledge is from what you were told by others, please state when and by whom were you informed.

Ans. The hearsay evidence referred to was told me by John G. Heath, Moses Heath, Arthur Sherman, and other members of this colony and was told me in the spring of 1824, in business transactions during their preparations for their departure to Mexico.

3. If to interrogatory No. 5 you answer yes, please state whether your information was hearsay or of your own personal knowledge.

Ans. What I have stated in my answer to the 5th interrogatory was hearsay. That and all other hearsay evidence was told me by John G. Heath and the parties with him while they were preparing to start on their journey to Mexico or had just returned, and was stated in matters of business they were transacting in their preparations for that purpose.

4. If to interrogatory No. 6 you answer yes, how do you know Sherman Stewart and Moses Heath or either of them went with a so-called Dr. John G. Heath's colony to Mexico, and how do you know that Dr. Heath ever took a colony to Mexico?

Ans. I had a personal acquaintance with Sherman Stewart and Moses Heath. They were in the company during the time of their preparations for their departure. They were in the crowd
187 on the boats and said where they were going. As to knowing that Dr. Heath took a colony to Mexico, I did not go with them. I know he got up a company for that purpose. I saw their preparations. They had a printing press, stores, goods, and provisions of all kinds, different farming implements, machinery, &c. They were quite a while getting together and getting ready. They said where they were going and what they were going for—to live in and become citizens of Mexico, to settle on and cultivate a tract of land granted to Dr. John G. Heath. They were about ready when I delivered the load of flour. Their boats were being loaded, and then very soon after they left, going down the river and, as they said, to old Mexico.

5. How do you know that Dr. John G. Heath ever went to Mexico or ever returned at any time?

Ans. As to Heath's going and returning from Mexico, I was not at any time with him. I only knew this from what he said when he went and returned, and also from the further fact of having been at the battle of the Bracito, upon the tract of land granted by the Mexican government. From what he said and what I saw I knew the Bracito, where the battle was, was the land he claimed.

6. If to interrogatory No. 9 you answer in the affirmative, who told you anything about it, and when and where was it told you?

Ans. Dr. John G. Heath, Moses Heath, and others of the colony told me what I have stated in answer to interrogatory 9 at Old Franklin, Mo., immediately after they came back in 1825 and 1826, and also at different times down to Heath's death.

7. If to interrogatory No. 10 you answer in the affirmative, how can and how do you estimate the costs and expenses?

Ans. I estimate the cost from what I saw Heath had bought and gathered together and take with him to Mexico and the necessary

expenses of such a trip at that time, and then from the fact that some years afterwards, as captain, I took a company of soldiers to Mexico, and knowledge of the expenses of such a company to that country.

8. All you know about this matter is what you have been told by others?

188 Ans. No; that part of my evidence is clearly distinguished as such in my direct and cross examination, I saying in my examination what is hearsay; the rest is from personal knowledge and observation.

Q. Are you directly or indirectly interested in this claim or the result of this suit? If so, how?

Ans. I am not; have no interest, directly or indirectly, in this claim or the result of this suit.

HORATIO H. HUGHES.

Subscribed and sworn to before me on the day, at the place, and within the hours aforesaid.

E. E. DUNAWAY,
Notary Public.

189 EX. J FOR PLAINTIFFS.

Deposition of James Bryan.

In the United States Court of Private Land Claims.

J. B. CESSNA *et al.* *vs.* UNITED STATES *et al.* } No. 59.

Interrogatories submitted to James Bryan, by agreement of counsel hereto attached, this 19th day of June, 1894.

1st interrogatory. State your name, age, and place of residence.

Answer. My name is James Bryan; I live in Nevada, Mo.; age, 88 years; was born July 29th, 1806.

2nd interrogatory. Where did you live in 1822, 1823, 1824, and 1825?

Answer. I then lived in St. Charles county, Mo., about twenty-five miles west of St. Charles and five or six miles from the Missouri river.

3rd interrogatory. Did you know at that time Dr. John G. Heath, and what acquaintance did you have with him?

Answer. I knew him very well. He was a great friend of my father. Heath often stopped at our place on his way from St. Charles and St. Louis to his home, and I was often at Heath's salt well, in Saline Co., Mo.

4th interrogatory. At that time what was Dr. John G. Heath's standing, influence, position, and financial circumstances?

Answer. Heath was a very prominent, influential, and wealthy man. He was a member of the first constitutional convention in

Missouri, in 1820; was often talked of as a candidate for governor of the State, but would not take the position. Heath was wealthy; owned a great deal of land in different counties of the State and a number of slaves.

5th interrogatory. What, if anything, do you know as to Dr. John G. Heath going to Mexico in 1824, and, if he did go, did he take others with him? Tell all you know about the matter—when and where they started from, when and under what circumstances you saw them, and who and how many went with him.

Answer. In 1824 Heath organized at Old Franklin, Mo., a company to go with him to old Mexico to settle on and cultivate land granted to him by that government. They came down the Missouri river in six or eight boats and stopped at the mouth of the Semosage creek, where they stayed a day or so to take in provisions, &c. Heath, his wife and family came out and stopped one night at my father's. He bought three or four wagon-loads of flour and bacon from my father, and I helped to haul and load them on their boats. There was a large company of people with him—over one hundred and fifty at least, men, women, and children. Most of them were from Old Franklin, which was one hundred and fifty miles from where I then lived; only remember now the name of one of them, a man by the name of —— Batties, and family—wife and several children. A number of neighbors and friends of ours joined Heath and went with his company to Mexico—Jacob Dust, Charles McLain, Abraham Dust, with family of ten or twelve—six or eight boys—and Adam Zumalt and large family. Zumalt and Abraham Dust and families did not return; stayed in Texas. Jacob Dust came back, stayed awhile, and he and family then went to Texas, and he was the Lieutenant Dust who was killed in one of the Mexican massacres in Texas. Heath took with him to Mexico his wife and four children, if not more—two boys and two girls. The oldest was a boy named Robert. I saw them all at the boats in the river, and there must have been over thirty different families. Heath and the parties with him at this time said they were going to Mexico to settle, live on and cultivate his tract of land there.

I remember these fact- and the time when they occurred for the reason that I got from Charles McClain when he went away a very fine dark-bay blooded stallion; I trained, run and won races with him. I was then not of age, and my father helped me to get the horse. McClain returned about two years afterwards and got the horse back again.

190 6th interrogatory. Did Heath and others of his party return; and, if so, what did Heath tell you upon his return as to the reason for not staying in Mexico?

Answer. Heath and most of the others came back about two years afterwards, and at the time said they were driven off the land and out of the country by the Mexicans—were not allowed to remain there on account of a revolution or trouble in the Mexican government, the Emperor having been killed. Abraham Dust and Adam Zumalt and families did not return; remained in Texas.

7th interrogatory. If you know anything further of importance in this case, please tell the same as thoug- particularly interrogated.

Answer. Have since thought of some of the properties Heath owned in 1824. He had a number of farms in St. Charles county and town property in St. Charles—houses and lots, &c.; had several Spanish grants in St. Charles county, Mo., and also owned a valuable farm or ranch at Herman, Missouri. Heath's salt springs were very valuable. At that — he was doing a good business. He also had a large tract of bottom land at the mouth of Vaus river; some 1,700 acres. My father wintered horses and cattle on this land and I helped take care of them and know that my father talked with Heath about trading for this land, but mother interfered. Heath's brother Robert was partner in some of this property.

his
JAMES x BRYAN.
mark.

Witnesses:
JOHN T. BIRDSEYE.
LOVINA MOORE.

Subscribed and sworn to before me on this 19th day of June, A. D. 1894. My term as notary will expire Nov. 9th, 1897. Witness my hand and official seal, at my office, in Nevada, Mo.

{ Seal of John T. Birdseye, Notary Public, Vernon Co., Missouri. }

JOHN T. BIRDSEYE,
Notary Public.

Cross-interrogatories Propounded to James Bryan.

1st interrogatory. What was your business in 1823, 1824, and 1825, and what is your business now?

Answer. I was then working at the stone and brick-laying business; also engaged in helping to survey. I am now almost blind and old, doing no business except a little work around home; live with my grandson, Albert White, at Nevada, Mo., and on my own property; also have two sons and two daughters living in Nevada, Mo., with whom I spend some time.

2nd interrogatory. How did you happen to know Dr. John G. Heath?

Answer. My first recollection of John G. Heath was at my father's, in 1812 or about that time—at the commencement of the Indian war in Mo. He stayed at my father's over night and they talked of the Indian trouble. I remember I was very much frightened. I knew Heath from then until his death. He often stayed with my father, who then lived in a large brick house on the road from St. Louis to Old Franklin and Heath's salt springs.

3rd interrogatory. Where did he live and where did you live?

Answer. Heath lived at that time at his salt springs, in Saline county, Mo., and I lived at my father's, Jonathan Bryan, in St. Charles county, Missouri.

4th interrogatory. What opportunity had you for knowing his financial condition?

Answer. Me hearing of Heath and my father often talk of their business matters and about trading for different tracts of land—father wanted to trade, but mother would not consent to leave our home—and again Heath was always spoken of about 1820 and 1824 by every one as being the wealthiest man in all that country, and I at that time used to help Nathaniel Boone and my brother-in-law, Alexander McKinney, Government surveyors, to make sur-
191 veys of lands in that country from the time I was sixteen years old, and in this way I got knowledge of some of Heath's lands and a better personal acquaintance with him. I was assistant and deputy surveyor in St. Charles county for over thirty years and was county surveyor in Vernon county, Missouri, for over fifteen, or deputy part of that time.

5th interrogatory. Are you certain that Dr. John G. Heath went to Mexico in 1824?

Answer. I did not go with Heath to Mexico. I know that Heath and party prepared and started for t-ere in 1824, just as I have said in my examination. Heath and they at the time they started said they were going to Mexico to settle and live upon a tract of land granted to Dr. John G. Heath by the Mexican government and to make it their homes. Heath said he had been in Mexico; had become a citizen and owner of lands there, and that they were going there to live upon the same, and when they returned, in about two years afterward, they all said they had been there and would have remained and gotten homes from Heath had they not been driven off on account of the revolution or trouble in the Mexican government. They further said that after the overthrow of the Emperor Iterbide no Americans were allowed to remain in Mexico, especially near El Paso; the political feeling was intense against foreigners generally, and especially Americans, at that time. Heath went first to Mexico in 1821 or 1822. I knew of his going at the time.

6th interrogatory. Is not all the information you have on that subject derived from what Dr. Heath told you himself or from what was told you by others?

Answer. The information as to Heath and company being in Mexico and what occurred there is derived from what they told me in their preparations for leaving and at the time of their going and returning; all my other evidence is what I saw and knew personally.

7th interrogatory. Have you had occasion to discuss these facts with any one since 1824 until recently, and how is it that your memory is so good upon this subject?

Answer. Yes; very, very often; might say dozens of times with Dr. John G. Heath and many of those who went with him; with my father and brother, Elijah Bryan, and with no one very recently except my daughter, Lovina Moore, & other members of my family, until about three weeks ago Mr. Cessna came to see me on the subject. All the parties I have named are now dead except my brother, Elijah Bryan, who is over ninety-five years of age. He

is sick, feeble, deaf, and childish, having lost his mind and memory for some years past*ed*. Since those who were then living have all died have not talked much about the matter. The getting of the horse from McClain was one of the chief incidents that helps me to remember the facts as well as I do, and then the going of Heath and his party to Mexico attracted considerable attention at the time.

8th interrogatory. Have you any interest in the property or have you ever had any interest in it?

Answer. No; none whatever.

his
JAMES x BRYAN.
mark.

Witnesses:
JOHN T. BIRDSEYE.
LOVINA MOORE.

Subscribed and sworn to before me this 19th day of June, 1894. My term as notary will expire Nov. 9th, 1897. Witness my hand and official seal, at my office, in Nevada, Mo.

{Seal of John T. Birdseye, Notary Public, Vernon Co., Missouri.}

JOHN T. BIRDSEYE,
Notary Public.

192 EX. K FOR PLAINTIFFS.

Deposition of Charles Woodruff.

In the Court of Private Land Claims, Sitting at Santa Fé.

J. B. CESSNA *et al.*, Plaintiffs,
vs.
UNITED STATES *et al.*, Defendants. } No. 59.

Deposition of witness produced, sworn, and examined on the 19th day of January, in the year of our Lord 1894, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of that day, at the residence of Charles E. Woodruf, in the county of Saline and State of Missouri, before me, R. M. Reynolds, notary public, in a certain cause now pending in the said court in the —— of ——, in the State of ——, between J. B. Cessna *et al.*, plaintiffs, and United States *et al.*, defendants, on the part of the plaintiffs.

Present: No one on behalf of the plaintiffs, and no one on behalf of the defendants.

CHARLES E. WOODROOF, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, by interrogation deposeth and saith:

1st interrogatory. State your name, age, and residence.

A. My name is Charles E. Woodroof; age, 71; residence, Arrow Rock township, Saline county, Missouri.

2nd interrogatory. Did you know Dr. John G. Heath and his family; and, if so, when did you first become acquainted with them?

A. I knew Dr. John G. Heath and his family ever since 1836 or 1837. I was then living in Warren county, near the Montgomery County line; soon after got to running on a boat on the Missouri river and often at the mouth of Gasconade river, where Heath resided. I knew his sons, Robert J. and Joseph Heath; also his daughters, Eliza, who married William Sherman; Herriet, who married Samuel Guiler, and another, whose name I do not now remember.

3rd interrogatory. What do you know as to the said John G. Heath owning a tract of land called the Bracito, granted to him by the Mexican government, through the town council of El Paso, in 1823, situate on the Rio Grande about forty miles northwest
193 of El Paso? If anything, please state fully all about the matter.

A. Heath frequently told me about this tract of land that — been granted by the Mexican government under the reign of Iturbide, and that he was to settle it with a colony; that he came to the United States and got his colony and supplies and returned in 1824 ready to perform his part of contract fully, but that when he got there there had been a revolution, the Emperor being overthrown. The revolutionary authorities would not let him occupy it, and drove them out and would not let them remain in that part of the country. He said he had taken his family and other families there according to contract, but that the revolutionary authorities claimed that as the grant had been made under the reign of Iturbide they would not let them remain. Eliza, Joseph, and Robert J. Heath frequently told me the same thing and often told me of their trip to Mexico with their father and his colony. Heath and his family all said they had all gone to Mexico intending to settle on this land and remain there and become citizens of that country and to make Mexico their home, according to their contract, and that when they got there they were not allowed to stay. Heath frequently told me that his return to the United States was from necessity on the account of threats and acts of hurt and bodily harm on the part of the revolutionary authorities — overthrew Iturbide. He frequently told me his claim was valid and legal and some day he hoped to get back his land. This was his talk as long as he lived. He said he had wrongfully been driven off; that he had spent a great deal of money in taking his colony there and in an honest effort to settle the same; that the failure was not on his account, but on the part of authorities who made the grant; that he had lost all of his property in this expedition and returned bankrupt, but hopes some day when he was able he would get back his property. John G., Robert J., Joseph, and Eliza Heath could speak Spanish pretty well, and the- said that they learned it while there in Mexico with their colony.

4th interrogatory. Were you ever on this tract of land;
194 if so, what were the circumstances?

A. I was a soldier in the Mexican war in 1847 in Com-

pany C, St. Louis, Missouri, cavalry battalion, commanded by Colonel Easton, and in General Price's brigade. In the fall of 1847 we had a skirmish with the Indians near the Bricito. I and some others at the time we were attacked were herding some sheep. We had been here and in this neighborhood for some time. I remember that a lot of our sheep got swamped in mire and mud along the river here, and the army went away in a hurry, and we had to leave a part of our sheep there; told a few Spaniard- that were there to take them. From what Heath had told me and the description that he gave I knew that we were on his land, and so told those that were there. When I returned from the Mexican war, Heath and I frequently talked about this incident and the fact of its being on his land. He tried to sell me his grant and we made some negotiations about it, but never entered into any written contract; after having seen the land, had I the money at the time would have purchased an interest. After the death of John G. Heath, Joseph and Robert J. Heath often talked and tried to arrange with me and take possession of this land, but we did not on the account of means. John G. Heath and his heirs claimed to own this land — expressed a hope that they would get it some day, as they claimed that they had never give- it up or abandoned it, but was driven off and left of necessity of threat of imprisonment or death, after they had tried faithfully to make it their home, and that they believed that for this reason that it would come all right.

5th interrogatory. What was the character, position, and influence of Dr. John G. Heath as a man and a citizen?

A. John G. Heath was a very shrewd and intelligent man; scarcely had an equal, if any, in the State; was a leader of men all his life. He was a lawyer and a judge of the courts for many years; was an eloquent speaker and one of the best talkers I ever listened to. He had a considerable magnetic power and influence over men and was always popular with his neighbors. It was said
195 that Heath was very wealthy before he went to Mexico; had owned a great deal of land and personal property, all of which he sold before leaving; he left with his colony. This I got from Heath and others.

6th interrogatory. What further do you know relative to this grant to John G. Heath or his colony? If anything of importance or benefit to the case, please state the same fully as though particularly interrogated.

A. I can think of nothing further now.

CHARLES E. WOODROOF.

Subscribed and sworn to before me on the day and at the place in the hours aforesaid.

R. M. REYNOLDS,
Notary Public.

My term as notary public expires Dec. 10, 1894.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Cross-interrogatories Propounded to Charles E. Woodroof.

1st interrogatory. Will you please state whether the facts stated by you are of your own personal knowledge or were they derived from what others told you?

A. They are partly from personal knowledge, partly from what others told me; what is hearsay I have so stated in my examination and cannot make it any plainer by repeating it.

2nd interrogatory. If you were ever over the land claimed in this suit when was — and how did — happen to be there; what was your business there, how long did you stay, and where did you go after leaving?

A. I was a soldier in Mexican war at the time; was there and in neighborhood several weeks; then went to El Paso; stayed there until March 17, 1848, then went to Chaughua; returned to United States in fall of 1848.

3rd interrogatory. If your knowledge was derived from what others told you, whom were they, and when and where were you when they talked with you?

196 —. This is already stated in my examination — chief, and I can add nothing further except to say that was told me was generally told at Gasconade county, Missouri.

4th interrogatory. Are you directly or indirectly interested in this claim or in the result of this suit? If so, how?

A. I am not interested in any way or manner in this claim.

CHARLES E. WOODROOF.

Subscribed and sworn to before me on the day, at the place, and in the hour aforesaid.

R. M. REYNOLDS,
Notary Public.

My term as notary public expires Dec. 10, 1894.

197 EXHIBIT L FOR PLAINTIFFS.

In the Court of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Interrogatories to be submitted to Magdalena de Carranco and Gregora Garcea on behalf of plaintiffs above named before M. C. Cameron, consular agent at Victoria, Mexico.

1 Q. Please state your name, age, and residence.

A. My name is Magdalena de Carranco; I — resident of C. Victoria, Tamaulipas; eighty-five years of age or older.

2 Q. Where did you live in 1824 or 1825?

A. I lived then in Sota la Marina, a harbor on the Marina river, not very far from the gulf of Mexico.

3 Q. Did you ever know Juan Gid or Dr. John G. Heath (American); and, if so, where and when did you know him?

A. I knowed him in 1824 or 1825, because he returned then with a colony of fifty or a hundred persons—men, women, and children—from Mexico to the United States. They had been in the northern part of Mexico, in El Paso del Norte, to settle on land, as they told me, and they were compelled to leave, and they were on their return to the United States. They remained a sufficient time. The general and other residents desired that they should take up some land there and establish themselves there, but they did not want. The most of them took a schooner or bilander and returned to America. As they could not live on the lands which they had come to settle, they did not want to remain in the country.

4 Q. Please state fully all you know or remember about Juan Gid or He-th and those with him and the reasons for recollecting same.

198 A. He was a red-haired man, or of a whitish color. He had his family with him—that is to say, his wife and various boys and girls—and a large number of other families. He had supplies and provisions, etc., etc., when they arrived first. I worked for them and I came to know Mrs. Heath and the children familiarly. It would please me greatly to see some of those persons, but, as far as I know, none of those who had been there are alive. I do not know exactly my age, but when this happened I was still a young girl. It was very near the time at which Iturbide was shot, a fact I remember well. The return of Mr. Heath and his colony was in some manner connected with the fall of Iturbide government, but I cannot exactly explain it. During the time they remained — Sota la Marina Heath and others of his companions worked in the salt lagoons. Mr. Heath and his colony may have been in Sota la Marina a short time in 1824, but I do not remember it, because I only came to know them on their return from El Paso in 1825.

5 Q. What else of importance to plaintiffs in this case do you know? If anything, please state the same fully, as though particularly interrogated.

A. I do not remember anything more just now.

MAGDALENA GALVANA DE CARRANCO.

Witness-:

F. W. GREGORY,

M. C. CAMERON,

U. S. Consular Agent, C. Victoria, Mexico.

199 In the United States — of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Cross-interrogatories to be Propounded to Magdalena de Carvanco and Gregora Garcea.

First. Where was Doctor Heath when you first saw him and who were with him?

A. I saw Doctor Heath or Juan Heath for the first time in Sota la Marina. I do not know the names of the persons who came with him. I only know Juan G. Heath.

Second. Which way was he travelling—north or south?

A. I do not remember for certain if I saw them or not before leaving for El Paso; if not, on their return to the United States.

Third. Did you have any conversation with him in person?

A. Yes.

Fourth. Give us as near as you can the exact date when you first and last saw him.

A. I cannot say for certain—first in 1824 and last in 1825, near the first of the year.

Fifth. Do you know anything about him or his mission, except from what was told you by Doctor Heath and others?

A. I do not know more than what I said before I saw.

Sixth. Is not all the information that you have about Dr. Heath what you have heard from others and from him?

A. Yes; with the exception of what I saw when he and
200 his people were at Sota la Marina.

Seventh. Were you ever in the United States or in the province of New Mexico; and, if so, what were you doing there? And state when you were there.

A. No.

MAGDALENA GALVANA DE CARRANCO.

Witness-:
F. W. GREGORY,
M. C. CAMERON,
U. S. Consular Agent, C. Victoria, Mexico.

201 EXHIBIT M FOR PLAINTIFFS.

In the Court of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Interrogatories Submitted to Price Cooper Before the United States Consul at Juarez, Mexico.

Interrogatory 1. State your name, age, and residence.

Answer. My name is Price Cooper; age, eighty-two years; residence, Ysleta, Texas.

Interrogatory 2. Where have you lived since 1830 or 1832?

Answer. I have lived since 1834 or 1835 at Ysleta. Ten or eleven years prior to that I was at Santa Fé, El Paso del Norte, Ysleta, Chihuahua, Mexico City, traveling as a peddler between these points; settled in Ysleta in 1834 or 1835.

Interrogatory 3. What do you know, if anything, as to a grant of land to Juan Gid or John G. Heath in 1823, made by the ayuntamiento of El Paso del Norte, situated on the Rio Grande river, northwest of El Paso?

Answer. I know that such a tract of land was granted to Juan Gid or Doctor John G. Heath in 1823 by the Mexican government through the town council of El Paso del Norte, Mexico; got my information from Gid, the town council, and others, and have often been on the land. It was known as the Brazito, situated on the Rio Grande river, about forty miles northwest of El Paso. Heath was put into possession of this land; then went back to the United States to get some people to help him cultivate the same. He returned in 1824 with his family and two hundred persons with him. They remained a short time on this land, and then, after the overthrow and death of Iturbide, they were driven off and returned to the United States. I met Heath and others on this land. He had brought many things with him—stores, provisions, machinery of all kinds, farm implements, plows, &c.

Interrogatory 4. What was the common or general reputation in that neighborhood as to the ownership of this land from the time you first knew it to the change of the Mexican government?

Answer. It was always known by all people in that neighborhood and at El Paso as the Gid or Heath grant of land.

202 Interrogatory 5. What, if anything, were you told by Ponce de Leon, Marenio Barrello, and other Mexican officers and citizens as to this grant and the cause why Heath or Gid did not remain upon, settle, and cultivate this land?

Answer. They told me that Heath was driven away and not allowed to cultivate and remain on his land because the grant had been made to him under the laws and reign of Iturbide; that after

he was overthrown they tried to undo all that had been done during his time, and for that reason did not respect Heath's title. They drove him out of this country under the threat of imprisonment or death. They said their position was that, as Iturbide was overthrown, Heath would have to leave, as he got his grant under Iturbide's law. I often heard these same parties and others say a few years after and at other times they regretted that Heath and party were not allowed to stay upon his land; that they had done wrong in driving them away.

Interrogatory 6. What else do you know of importance to plaintiff in this case, if anything? Please state the same fully as though particularly interrogated.

Answer. I was at and about El Paso del Norte more or less from 1823; traveled from Santa Fé to El Paso, Chihuahua, &c., with my brother, Richard Cooper, peddling silk, goods, &c.; worked a while for Ponce de Leon and others at and near El Paso del Norte and then settled at Ysleta in 1834–'5. I met Heath first in 1822 or 1823 at El Paso del Norte, and then at different times afterward at El Paso del Norte and on his land, the Brazito. Heath was a man of light or sandy complexion, medium size; rather a little taller than an ordinary man. He was known both as a lawyer and doctor; he was quite a talker. When he returned, in 1824, he had his wife, family, four or five children, boys and girls, and some two hundred persons with him. A boy about my age at the time was the oldest of Heath's family. There was a brother of the Doctor in the crowd that came with him; do not remember his first name now. I think there was also a man by the name of Mr. Laine or McClain, am not sure which, with him. Heath brought with him a great many things—farm implements, machinery of all kinds, stores, provisions, and a printing press. When he was driven off
203 he had to leave all his things behind him, not having the money to take them back. At the time he left he said it had cost him many thousand dollars to get here, and that it would ruin and bankrupt him to go back. Many things that Heath brought were taken from him by the Mexican people and Mexican government. I afterwards saw some of his machinery in Chihuahua. Heath was forced to leave his land under the threat of imprisonment or death. He was given a certain number of days to go away. These facts I got at the time from Heath, the town council of El Paso, and other officers of the government, and the reasons given were that Iturbide and his government had been overthrown, and that nothing done during that time should remain; that the law under which Heath's grant had been made was repealed, and that Heath should not remain. Heath and party returned to the United States by way of Chihuahua and Soto la Marina, the way they came to El Paso del Norte.

(Signed) PRICE COOPER.

Subscribed and sworn to before me this third day of August, 1894.

THEODORE HOUSTON,

[SEAL.] *U. S. Consul at Paso del Norte, Mexico.*

204 In the Court of Private Land Claims Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Cross-questions Submitted to Price Cooper Before the United States Consul at Juarez, Mexico.

Question 1. Where were you born and what was your business in 1823–'4 and what is your business now?

Answer. I was born in the northern part of Pennsylvania near the New York line; left there when a child; was in Illinois a few years, coming to El Paso when about ten or eleven years old; I am a farmer; in 1823–'4 I was a peddler.

Question second. Where did you live at that time?

Answer. I had no permanent home in 1823–'4; was travelling with my brother.

Qestion third. How did you happen to know Dr. Heath?

Answer. I met him on his land, about forty miles northwest of El Paso.

Question fourth. Do you know anything about his mission to El Paso or Mexico except from what he told you and what you heard from others?

Answer. No.

Question fifth. From whom did you ever hear anything about the land grant of Dr. Heath, and when did you first hear it?

Answer. From Dr. Heath, Ponce de Leon, Guadalupe Miranda, my brother, and others. First in 1823.

Question sixth. How did you happen to know anything about his land grant up in New Mexico?

Answer. Having met Gid or Heath in El Paso del Norte at or about the time of the grant and then passing over the land in going to and from Santa Fé.

Question seventh. Have you any knowledge in relation to Dr. Heath or land grant to him except from what was told you by Dr. Heath and others?

Answer. No; except meeting Heath on the land several times, as I have stated.

205 Question eighth. Do you know how J. B. Cessna found out that you knew anything about Dr. Heath or a land grant?

Answer. I do not.

Question ninth. State fully what he said to you on your interview with him about your knowledge of Dr. Heath.

Answer. Mr. Cessna came to my house at Ysleta, saying he wanted an interview with me relative to the Heath or Gid grant; that he was informed that I had knowledge of the matter. He asked me to state when and where I knew Heath and what I knew about the Mexican grant to him. I gave him a statement of the matter and

he said he desired to have my evidence taken to be read in court; that it was important.

Question tenth. Do you know where the land is located and what its area and extent is?

Answer. I know where the land is. It was five miles square.

Question eleventh. Have you had occasion since 1823–'4 to discuss with anybody the facts about which you testified in your deposition, and, if so, with whom did you discuss the facts and what was the occasion therefor?

Answer. John Gilette, an old settler here; John Evins, Ben. Dowell, James Magoffin, and Joe Done, all of whom are dead except the first mentioned. There was no particular reason for these conversations, except as it was a matter of general interest.

Question twelfth. Who were with Dr. Heath when you first knew him, and which way were they travelling?

Answer. He was on the grant when I first met him.

(Signed) PRICE COOPER.

Subscribed and sworn to before me this 3rd day of August, 1894.

[SEAL.] THEODORE HOUSTON,
U. S. Consul at Paso del Norte, Mexico.

206 EXHIBIT N FOR PLAINTIFFS.

In the Court of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Interrogatories Submitted to Gregoria Herrera Before American Consul at Juarez, Mexico.

1 Q. State your name, age, and residence.

A. My name is Gregoria Herrera; I am eighty-one years and four months old; I was born in Paso del Norte, and at present I reside in Juarez, Mexico.

2 Q. Where did you live in 1823 and 1824?

A. In the years one thousand eight hundred and twenty-three and one thousand eight hundred and twenty-four I was living in Paso del Norte, Mex., called today Juarez.

3 Q. Did you ever know Juan Gid or John G. Heath, and, if so, where did you know him? Tell fully all you know about Gid or Heath.

A. I knew Juan Gid or John H. Heath in 1822, 1823, and 1824. I saw him frequently in El Paso. I met him in 1824 in El Brazito, a land which had been granted to him on the part of the Mexican government through the intervention of the ayuntamiento of Paso del Norte in one thousand eight hundred and twenty-three, on or near the place where today Las Cruces, New Mexico, is situated. At that time I passed there in company of my father, Jose Herrera;

my uncle, Cerciano Avilez, and various brothers, all of which have died. I found Gid, as said, and then I was eleven years old. I remember that a dog jumped at us, frightening the mule my
207 uncle rode, and the consequence thereof was that the mule threw my uncle to the ground. Gid or Heath, and those who were with him, did not remain a long time on their land. After the fall of Iturbide became known in this country, Heath was not allowed to go on living on -is land. The authorities of the victorious party ran him out. The new government tried to undo everything which had been done under the command of Iturbide, and as Heath had obtained his grant under the laws of Iturbide, he was not allowed to remain in possession; he was ordered to leave, threatened with jail and death. When Gid or Heath left there, he took a southern direction for Chihuahua and Sota la Marina. It was the general talk at that time, that in consequence of the downfall of Iturbide, Heath could not remain on his lan-s because they did not let him. A- I have stated, so it happened. I can give no more details; but I know that when Gid left and not remained on his land, it was on account of the downfall *od* Iturbide's government. I have no knowledge that the government, through some official act of its executive (president), has cancelled Heath's title. They took the position that as the grant had been given under the laws of Iturbide Heath could not be allowed to remain.

4 Q. What, if anything, do you know as to a tract of land situated on the Rio Grande river some forty miles northwest of El Paso del Norte, of its having been granted to Juan Gid or John G. Heath by the ayuntamiento El Paso del Norte in 1823. State fully all you know personally as to said grant, and also, what was the general repute or reputation as to the ownership of said tract of land in that country, from the date of the grant to the change of the government?

A. I know that the Mexican government through the in-
208 tervention of the ayuntamiento of Paso del Norte, bestowed upon John Gid or Heath, one "sitio" of lands, situated on the Rio Grande, northwest of El Paso del Norte, measuring five square leagues. I was not present when donation took place, but on various occasions the circumstances of the donation have been told to me by Ponce de Leon and others, and I know that it was generally known that the ayuntamient- of Paso del Norte had grant- said sitio of land to Gid or Heath, whom I saw at one time on said land, as I have stated before; and I know that from one thousand eight hundred and twenty-three until the change of sovereignity said Juan Gid was generally reputed in that country as the owner of the "sitio" of said lands. That sitio of lands was always known as the property of *of* Heath, and it was also well known that Heath with his family, and others which depended on him, were living on said land for some time in one thousand — and twenty-four.

5 Q. After the overthrow of Iturbide's government in 1824, what was the disposition of the then suc-essful government and the Mexican people at El Paso del Norte towards permitting Americans or

foreigners to live, remain upon, and occupy lands in that *or* part of Mexico?

A. As this has taken place so long ago I do not remember all the facts, but I know that before the downfall of Iturbide was known in El Paso, Gid or Heath was doing well; but immediately after the change of government Heath's troubles began; he was no longer allowed to remain on his land, but he had to leave because the law was revoked, Iturbide went down, etc. The disposition of the government which succeeded the one of Iturbide, as also of the
209 town of El Paso, in one thousand eight hundred and twenty-four, was to generally undo what had been done during Iturbide's time, and Heath havi-g been an American foreigner, and having obtained the grant under the laws of Iturbide, he was not allowed to occupy the lands of the grant, neither was he permitted to stay and live on them, for which reason he left and returned to the United States.

his
GREGORIA x HERRERA.
mark.

Witness-:
THEODORE HUSTON.
CHARLES EMIL NESCHE.

Subscribed by making his mark and sworn to before me this 2 day of Aug't, 1894.

THEODORE HUSTON,
U. S. Counsel at Paso del Norte, Mexico.

210 In the United States Court of Private Land Claims, Sitting at the City of Santa Fé, New Mexico.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Cross-interrogatories to be Propounded to Gregoria Herrera.

First. State your business, your age, and residence.

A. Farmer; eighty-one years old; reside in Juarez, Mexico.

Second. What was your occupation in 1823–'4, and what is your occupation at the present time?

A. I had no occupation in 1823–'4. I lived with my father, Jose Herrera. As I am so old I do not see and cannot work.

Third. Where did you first see Dr. Heath, and how did you happen to see him?

A. I saw Dr. Heath the first time in El Paso del Norte in 1822 or 1823; we met there.

Fourth. Have you any knowledge as to what his business was at *at* El Paso except what you have heard from others, and if you have any knowledge other than that derived from other persons, how did you happen to obtain it?

A. I have no knowledge of the matter of Dr. Heath further than I have already stated.

Fifth. Did you ever see what is claimed to be a grant to Dr. Heath?

A. I saw the grant of Heath in 1824, having been there as I have already stated, and I have been at the same place on different occasions. It was always known to all the people as the grant
211 of Gid or Heath, and all did know that the family of Heath and other depended upon him were living upon said lands in 1824.

Sixth. Were you ever on the property, and do you know anything about it except from hearsay? If so, how did you derive your information?

A. I was on the property. I met there Heath. This and what I have heard has been (constitutes) my information.

Seventh. When was the first time you ever saw Heath?

A. When I was ten or eleven years old.

Eighth. Is it not a fact that all you know about Dr. Heath and his land grant is what you have been told by Dr. Heath and others?

A. Yes; with the exception of my meeting with Dr. Heath on his "sitio" of lands.

his
GREGORIA x HERRERA.
mark.

Witnesses:
THEODORE HUSTON.
CHARLES EMIL NISCHE.

Subscribed by making his mark and sworn to before me this 2 day of August, 1894.

THEODORE HUSTON,
U. S. Consul at Paso del Norte, Mexico.

212 EXHIBIT O FOR PLAINTIFFS.

In the Court of Private Land Claims.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

Deposition of witness T. T. Teel, produced, sworn, and examined on the 8th day of June, A. D. 1895, at El Paso, El Paso county, in the State of Texas, before me, John C. Pearce, a notary public in and for said El Paso county and State of Texas, in a case now pending at Santa Fé, New Mexico, between J. B. Cessna *et al.*, plaintiffs, and The United States *et al.*, defendants, by agreement of attorneys hereto attached. Present at the taking of the said deposition, J. B. Cessna, Esq., and S. B. Newcomb, Esq.

T. T. TEEL, being produced, sworn, and examined, deposeth and says:

My name is T. T. Teel; my age, 71; I live at El Paso, El Paso county, Texas.

Q. How long have you been acquainted in El Paso and vicinity?

A. I first became acquainted here in June, 1861. I left here in latter part of July or August, 1861, and went to Mesilla, New Mexico, and remained there until 1862, when I went to San Antonio, Texas.

Q. Have you any knowledge of a grant made by the Mexican government, made in 1823, through the town council of El Paso del Norte, to John G. Heath of a tract of land on the Rio Grande river in the Mesilla valley, covering what is now known as Las Cruces, Messilla, &c.; and, if so, when and from whom did you learn of this grant? Tell all the particulars you know of said grant.

A. I never saw any grant. About 1858 a man of the name of Lorenzo Castro, who lived in San Antonio, where I then lived, who — a real-estate agent and dealt in Mexican land grants and was at this time my client and for a long time thereafter, amongst other Mexican grants he told me of a Mexican grant which was in New Mexico called the Dr. Heath grant, and also used a Mexican name for this grant, Juan Gid, and he, Castro, wanted me, amongst other things, to go in with him and litigate this grant, as this grant was not in my part of the county.

213 Q. Who was this Lorenzo Castro?

A. He was the son of the Impresario Castro.

Defendant here excepts to so much of the answer as refers to what Castro told this affiant, it being hearsay.

Q. Please state when you next learned of this grant, and state whether or not your informants were residents upon and claimants to portions of this grant.

A. I was a Confederate officer, and my term expired in the spring of 1862, and I wanted to stay upon this country and to purchase property either near Mesilla *at* this point after my year expired. I found a piece of property near and below Mesilla which was owned by a doctor; I do not now recollect his name. I was about to trade him land I had in Texas for this property. Before I made the trade I enquired of parties, men, of and about the title to this property, and among those of whom I enquired was a man called Miranda, Guadalupe Miranda, who had been under Governor Armijo—a secretary to the governor or some officer of the then governor at this time. My headquarters were at Las Cruces, and Miranda came often to see me, and so I enquired of him as to this title, he being an intelligent man. He told me, as I recollect, that the United States had not considered the titles as yet, and told me then about this Heath grant, and, of course, I declined to purchase the land up there in that condition for the land I had in Texas, which latter had good title.

Q. Did you get knowledge of this grant through other owners and settlers generally of this grant at this time?

A. I wanted to live there, and, as I recollect, I spoke to several others, and among them a merchant of Mesilla called Barela, the father, I think, of Mariano Barela; I am not positive as to any conversation about this grant with any others. I had determined in my mind to leave the country, and what I said to others are merely

impressions. I had some talk with Colonel Jones about this grant, being a guest at his house, and from what he said I did not care to purchase and he did not want me to buy the land, and Rafael Ruellas spoke to me about it; he was a friend of mine. I do not recollect any others whose names I now individually remember. The doctor who I referred to owned land in Mesilla. I think it is the land now owned by Tom Bull—I think. I do not remember the doctor's name.

214

Cross-examination:

Q. You say you went to Mesilla in July, 1861; how long did you remain there before you went up the country?

A. I remained in Mesilla from July, 1861, until about February 1, 1862, and came back about March, 1862, to Las Cruces, remaining there a few days, and went back to Texas.

Q. During the time you were in Messilla, from July to February, what was your business?

A. I was adjutant general of the Confederate forces.

Q. Was not the conversation you had with Guadalupe Miranda, Ruellas, and others in reference to the title to the land in the Mesilla valley that the people there then had to their lands, and what title they would give to a purchaser under the grants that had been given by the Mexican government, viz., the Dona Ana Colony Bend grant, the Mesilla Colony grant, the Santo Tomas, and others?

A. Yes; I believe the grants you mention I heard spoken of. I was not afraid to buy the Government vacant land, but I am not positive about those other grants, only the Heath and Mesilla, because it was the Mesilla grant that the land I desired to purchased lay. This land I desired to purchase lay on both the Mesilla and Heath grant-.

Q. May it not be the fact that your impressions as to the Heath grant being mentioned by these people arise from the fact that you had talked with Castro about this Heath grant?

Objected to as asking for a conclusion or impression and not for a fact.

—. My recollection is that it did have something to do with it. It called my attention to the fact of the conversation that I had had with Mr. Castro.

Q. Can you remember so as to state positively that Rafael Ruellas said anything to you about the Heath grant?

215 A. I cannot state positively; just an impression; he went with me to Texas as a friend of mine.

Q. Can you state positively that Guadalupe Miranda stated to you anything about the Heath grant; and, if so, what did he say?

A. I went to him to ask him in relation to the purchase of this land and to the titles to them, because I thought he knew more about it than any other person who lived up there. He was my friend and vis-ted my house, and these are my reasons why I went to him. I told him I wanted to buy two tracts of land that lay over

in Mesilla and wanted to know of him if the title was good; that I was about to trade some land I had in Texas for these lands and wanted to be sure that the titles to these lands in Mesilla were good. His words, as near as I can recollect, are as follows: The Government of the United States had neither issued no titles nor confirmed them; that there was a grant, I think the Mesilla Colony grant, and that there was an old Spanish or Mexican grant—they are synonymous terms with me—that was issued to a Dr. Heath, and he gave me the Spanish name; I do not now recollect; it sounds like Juan Gid; that is my recollection, and this is all I recollect.

Q. Can you state on your recollection positively that there were any other gentlemen with whom you talked who told you of the Heath grant?

A. No; none except Castro and Miranda.

T. T. TEEL.

THE STATE OF TEXAS, }
County of El Paso. }

Sworn to and on oath deposed by the said T. T. Teel and by him subscribed before me this 8th day of June, A. D. 1895, at El Paso, in El Paso county, Texas.

Given under my hand and official seal, at said El Paso,
[SEAL.] Texas, the day, month, and year last above written.

JOHN C. PEARCE,
Notary Public in and for El Paso County, Texas.

My term of office expires June 1st, 1897.

J. C. P.

216 EXHIBIT P FOR PLAINTIFFS.

Whereas by certain articles of agreement made and entered into on the twenty-second day of September, one thousand, eight hundred and eighteen, between Robert A. & John G. Heath by virtue of which said instrument, the — Robert and John were tenants in common in all real personal and mixed estate, held, purchased and owned by them, the said Robert and John. Now the said John for and in consideration of the sum of three thousand dollars, to him in hand paid by the said Robert, the receipt whereof is hereby acknowledged, has this day with Easter his wife, sold, transferred, conveyed, aliened and assigned over all their right title, claim and interest of what nature or description whatever unto the said Robert in and to the following-described property. One certain lot of ground in the town of St. Charles, purchased by the said Robert of James Mackay and Isabella his wife, and by the said John by Emanuel A. Rock and Margaretta Lebeau his wife, which by reference to the recorder's office in the county of Saint Charles, will more fully and at large appear. Also a tract of land containing eight hundred arpens French superficial measure situated on the waters of Salt river, purchased by Jean Baptiest Bravier and granted to him 11 April 1800, by Lieutenant Governor Zeno Trudeau. Also four hundred arpens of land purchased of Francois Noissie and

Cecile his wife and Louis Dubourg and Celesto his wife, situated on the Missouri river on the northwardly shore below the town of Saint Charles and opposite the Charbonnier, which by reference to the recorder's office at Saint Charles will more fully and at large appear. Also a tract of land containing three hundred and twenty acres situate in the county of Saint Charles, purchased of Pierre Dubois and Celesto his wife, John Baptiest Bequet, Calise Montardy and Therese and Mary Ann three wives, heirs of Baptiest Vallie deceased, which by reference to the recorder's office at Saint C-arles, will more fully and at large appear. Also a tract of land purchased of Louis Tajon and Marie Louise his wife situate in the county of Saint Charles at the Marie Croche containing eighty arpens French measure, as by reference to the recorder's office at Saint Charles will more fully and at large appear. Also a certain lot of ground in the town of Saint Charles purchased of
217 Louis Tajon, Marie Louise his wife, situate on the main street. Bounded on the east by Main street, south by a [illegible] in the possession of John and George Collier formerly of Joseph [illegible]ecke, which by reference to the recorder's office at Saint Charles will more fully and at large appear. Also a tract of land purchased of Reni Dodier and Marie Terran his wife, situated on Salt river which was granted to said Daudier by Charles D. Delassus lieutenant governor of upper Louisiana as by reference to the recorder's office at Saint Charles will more fully and at large appear. Also a lot of ground purchased of Peter Bergier situated in the town of Saint Charles containing by estimation fifty feet on the main street and running back to the Missouri as by reference to the recorder's office will more fully and at large appear. Also a tract of land conveyed to John G. Heath containing eight hundred arpens situate in Saint Charles on the waters of Mississippi called Salt river, and four hundred arpens the half of another tract in the same county and on Salt river waters granted to one Joseph Marie by whom the same has been conveyed to the said John G. Heath, all of which before-described premises with all and singular the advantages appurtenances, privileges and benefits thereunto belonging or in anywise appertaining we the undersigned have this day assigned over, transferred, conveyed, released and quitclaimed unto the said Robert his heirs, executors, administrators and assigns forever.

In testimony whereof, we have hereunto set our hands and seals this 17th day of April 1824.

JOHN G. HEATH. [SEAL.]
ESTHER HEATH. [SEAL.]

Witness-:
O. J. REDD.
JOHN F. SIMPSON.

STATE OF MISSOURI, } ss:
County of Montgomery, }

Be it remembered that on this thirtieth day of April, one thousand eight hundred and twenty-four, before me, a judge of the

supreme court of the State of Missouri, personally came John
218 G. Heath and Esther, his wife, and severally acknowledged the foregoing indenture as for their act and deed and the land and premises therein mentioned and bargained and sold to be the right and estate of the said Robert A. Heath, his heirs and assigns forever. She, the said Esther, being by me first made acquainted with the contents thereof and by me privately examined apart from her said husband whether she executed the same voluntarily and without compulsion or under influence of her said husband, acknowledged and declared that she executed the same voluntarily and without compulsion or undue influence of her said husband; which said John and Esther are personally known to me to be the grantors within named.

Taken and certified the day and year aforesaid.

MATHIAS McGIRT.

Recorded this 27th day of July, 1824.

WM. CHRISTY, JR.,
Ex Officio Recorder.

STATE OF MISSOURI, } ss:
County of St. Charles, }

I, Jno. K. McDearmon, clerk of the county court and *ex officio* recorder in and for said county and by virtue of said office custodian of the records of deeds of said county, hereby certify the above and foregoing to be a full, true, and correct copy of a deed from John G. Heath to Robert A. Heath, with the acknowledgment and filing of the same, as remains of record in my office in Book "H," at page 47.

Witness my hand and official seal, at my office, in St. Charles, Mo., this 28th day of November, A. D. 1893.

JNO. K. McDEARMON, *Clerk.*

219 STATE OF MISSOURI, } ss:
County of St. Charles, }

I, Henry F. Piper, presiding judge of the county court within and for said county, the same being a court of record, hereby certify that the signature attached to the above certificate purporting to be that of Jno. K. McDearmon is his genuine signature, and that he was at the time thereof county clerk of the county court and *ex officio* recorder of deeds for said county, and as such full faith and credit are due all his acts, and that the said attestation above made by him is in due form.

In testimony whereof I have hereunto set my hand, at my office, in St. Charles, Mo., this 28th day of November, A. D. 1893.

HENRY F. PEPER.

STATE OF MISSOURI, } ss:
County of St. Charles, }

I, Jno. K. McDearmon, clerk of the county court within and for said county, the same being a court of record, hereby certify that the signature attached to the foregoing certificate purporting to be

that of Henry F. Piper is his genuine signature, and that he was at the time thereof presiding judge of the county court of said county, and as such full faith and credit are due all his official acts, and the said attestation is in due form.

Witness my hand and official seal, at my office, in St. Charles, Mo., this 28th day of November, A. D. 1893.

JNO. K. McDEARMOND.

220 EXHIBIT Q FOR PLAINTIFFS.

Know all men by these presents that we, John G. Heath and Esther his wife of the county of Cooper and State of Missouri for and in consideration of the sum of fifteen hundred dollars to us in hand paid by Robert A. Heath of the county and State aforesaid the receipt whereof *if* hereby — has this day granted bargained and sold and by these presents do grant bargain and sell unto the said Robert A. Heath his heirs and assigns forever the following-described tract of land situated, lying and being in the county of Gasconade and State aforesaid. First the northwest fractional quarter of section number eleven of township number forty-five north in range number six west containing one hundred and fifty-five acres and eighty-seven hundredths. Second the southwest and northeast fractional quarter of section number eleven of township number forty-five in range six west containing one hundred and sixteen acres and ninety-five hundredths, third the southeast fractional quarter of section eleven in township number forty-five of range number six containing fifty-eight acres and one-hundredths. Fourth. The southwest fractional quarter of section number thirty-three in township number forty-six in range number five containing eighty-four acres and twenty-seven hundredths to have and to hold all and singular, the appurtenances, privileges and advantages arising from the above-described premises unto the said Robert, his heirs and assigns forever, and the said John farther covenant*ly* and agrees to and with the sa-d Robert to warrant and defend the title to said premises against the claim of all and every person whatsoever.

In testimony whereof we have -unto set our hands and affixed our seals this *l*seventeenth day of April one thousand eight hundred and twenty-four.

JOHN G. HEATH. [SEAL.]
ESTHER HEATH. [SEAL.]

Signed, sealed, and delivered in present of witness—
O. F. REDD.
JOHN T. SIMPSON.

221 STATE OF MISSOURI, } ss:
County — Gasconade, }

Be it remembered that on this 20 day of April, 1824, before me, one of the judges of the supreme court of the State of Missouri, personally came John G. Heath and Esther, his wife, both of whom are personally known to me, and severally acknowledged the foregoing

instrument as their act and deed, and the land and premises therein mentioned and bargained and sold to the right and estate of Robert A. Heath therein mentioned, his heirs and assigns forever. She, the said Esther, being by me first made acquainted with the contents thereof and by me privately examined apart from her said husband, acknowledged and declared that she executed the same voluntarily and without compulsion or undue influence of her said husband. Taken and certified the day and year aforesaid.

MATHEW McGIRK.

Recorded the 4th day of July, 1825.

DAVID WALDO,
Clerk and ex Officio Recorder.

STATE OF MISSOURI, } ss:
County of Gasconade, }

I, G. H. Homfeldt, circuit clerk and *ex officio* recorder of deeds in and for said county, hereby certify that the above is a true copy of the deed as the same appears of record in Book "A," page 33, in my office.

Witness my hand and seal, at office in Hermann, this 8th day of January, 1894.

[SEAL.] G. H. HOMFELDT, *Recorder.*

STATE OF MISSOURI, }
County of Gasconade. }

222 This is to certify that the foregoing attestation is made and executed in due and proper form and executed by the proper officer; that the foregoing signature of G. H. Humfeldt is genuine, and that the said G. H. Humfeldt is at present the duly elected and acting clerk of the circuit court of Gasconade county, State of Missouri, and *ex officio* recorder of deeds in due form, and full faith and credit is due his official acts.

Witness my hand this 9th day of January in 1894.

RUDOLPH HIRZEL,
Judge of the Circuit Court of Gasconade County, Missouri.

STATE OF MISSOURI, } ss:
County of Gasconade, }

This is to certify that the foregoing signature of the Hon. Rudolph Hirzell, judge of the 13th judicial circuit, which includes Gasconade county, is genuine, and that the said Rudolph Hirzel is at present the duly elected and acting circuit judge of Gasconade county and State of Missouri, and that said attestation is in due form, and full faith and credit is due his office and acts.

Witness my hand and official seal this 10th day of January, 1894.

G. H. HOMFELDT,
Circuit Clerk and ex Officio Recorder.

223 EXHIBIT — FOR PLAINTIFFS.

Bill of Sale.

In the recorder's office, Cooper county, Missouri.

APRIL 6, 1824.

We, Robert and John Heath, have this day bargained and sold unto Joseph Reavis our negro man, William, aged about 28 years, a mulatto, which we purchased from Antonio Roynal for the sum of five hundred dollars, which we have received, and we covenant and warrent and promise that said slave, William, is at all times and in all places a slave for life and free from all encumbrances whatever, the title to which said William we warrent and defend forever, this sixth day of April, one thousand eight hundred and twenty-four.

JOHN G. HEATH. [SEAL.]
R. A. HEATH. [SEAL.]

CHARLES WOOD.
JOHN BIGHAM.

COOPER COUNTY, } ss:
State of Missouri. }

Personally appeared Charles Woods, a subscribing witness to the within bill of sale, and made oath before me, John Briscoe, a justice of the peace for said county, deposeth and saith that Robert A. and John G. Heath acknowledged the within bill of sale to be their act and deed, and further states that he, Charles Woods, was personally and well acquainted with John G. and Robert A. Heath.

JOHN BRISCOE, *J. P., C. C.*

STATE OF MISSOURI, } ss:
County of Cooper, }

I do certify that I recorded the within and foregoing bill of sale or instrument of writing on the 28th day of June, 1824, in Book "B," page 282.

ROB'T P. CLARK, *Cl'k.*

224 STATE OF MISSOURI, } ss:
County of Cooper, }

I, G. T. Pendleton, clerk of the circuit court and *ex officio* recorder in and for said county (the said county being a court of record in and for said county and State), certify that the foregoing is a true copy of a bill of sale from John G. Heath and Robert A. Heath to Joseph Reavis, and also the will of Robert Adams Heath, as fully as the same remain of record in my office.

In witness whereof I have hereunto set my hand and affixed

official seal at my office, in Boonville, Mo., this the 9th day of December, 1893.

G. T. PENDLETON,
Clerk & Recorder.

STATE OF MISSOURI, } ss:
County of Cooper, }

I, Dorsey W. Shackl-ford, judge of the circuit court of the 14th judicial circuit of the State of Missouri (said Cooper county being within said judicial circuit), do certify that G. T. Pendleton, whose signature appears to the foregoing certificate, is and was at the time of signing the same clerk of the circuit court and *ex officio* recorder in and for the said county of Cooper (the said court being a court of record in and for said county and State), and that the said attestation is in due form.

Giv-n under my hand this 9th day of December, 1893.

DORSEY W. SHACKLEFORD,
Judge of the 14th Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, } ss:
County of Cooper, }

I, G. T. Pendleton, clerk of the circuit court in and for the county of Cooper (the same being a court of record in and for said county and State), do certify that Dorsey W. Shackleford is judge of
225 the circuit court of the 14th judicial circuit of the State of Missouri, duly commissioned and qualified.

In witness whereof I have hereunto set my hand and affixed my official seal at my office, in Boonville, Mo., this the 9th day of December, 1893.

G. T. PENDLETON, *Clerk.*

226 EXHIBIT S FOR PLAINTIFFS.

(1.) T. Calderon. February 3rd, 1823. Extract.

MOST EXCELLENT SIR: We address to you the subjoined report, petition, and copy of the passports of the doctor in medicine Don Juan Gid, Anglo-American, who aspires to be a citizen of this Empire and to establish himself at the place of Brasito, and this corporation respectfully requests Your Excellency to be pleased to send these documents up to the throne of His Imperial Majesty and to excuse our errors if it does not go in due order of which we are ignorant. God preserve Your Excellency many years.

Compared. Francisco Sosa (rubric).

Paso del Rio del Norte, December 27th, 1822, second of our independence.

Most excellent sir.

JOSE FRANCISCO DE BARRIO. [RUBRIC.]
JOSE RAFAEL GARCIA. [RUBRIC.]
FRANCISCO JAVIER BERNAL. [RUBRIC.]
JOSE MARIA BELARDE. [RUBRIC.]
JOSE FRANCISCO CARVAJAL. [RUBRIC.]
JUAN MARIA BARDA. [RUBRIC.]
JOSE MARIA CORDOBA. [RUBRIC.]
MARIANO HORCASITAS. [RUBRIC.]
JUAN MARIA PONCE DE LEON. [RUBRIC.]

On the margin: The board has received this expediente today, the 16th of April, 1823 (2). Calderon (rubric).

SIR: The common counci[l] ayuntamiento) of Paso del Rio del Norte, situated at great and note distances from other towns, has the honor to speak for the fi time to your Imperial Majesty and to inclose to you with the m[ost] profound respect the original petition and copy of the passports of Doctor Don Juan Gid, Anglo-American, who proposes to establish himself and other Catholic families at the place called Brasito, about twelve leagues distant from this town. This corporation, being as yet little informed in the existing orders in force in the matter and there being no professional educated person in this place nor in the whole province with whom to consult, solely relates to Your Majesty in an humble way the reasons it has for the benefit that seems to it may result from these new inhabitants and settlers. This entire jurisdiction
227 has about eight thousand souls, governed politically and civilly by three common councils (ayuntamientos), the command of lieutenant governor being vested provisionally in the (3) three alcaldes of this town, and in military matters it is governed by the commandant of the neighboring presidio of San Elceario; in ecclesiastical matters by the curate of this town and his assistant and two religious persons who govern the very near and almost contiguous towns of San Lorenzo, Senecu, Ysleta, and Socorro, where the jurisdiction terminates. In all this Territory we, the inhabitants thereof, desire that the arts and industries demanded by the fertility of the soil be established, for up to date it can be said that we have been in need of and are in need of everything, even being ignorant of the names of artisans and without having masters to teach them to us or at least to see them in order to imitate them. It appears to us (save always the high intelligence of Your Majesty, our beneficent father and our liberator) that when the new settlement to which the petitioner refers is established in the vicinity of this place it will redound to the great benefit of these miserable, ignorant, and remote inhabitants. Therefore, as faithful subjects and with the confidence of loving sons (4), they cry out in their necessities and

Compared. Francisco Sosa (rubric).

send up to the higher hands of Your Majesty these documents which we judge necessary, in order that your Imperial Majesty, in use of your condescension and notorious graciousness, may decree and determine what may be convenient, the party in interest awaiting in this town your imperial decision. God preserve the valuable life of Your Majesty a thousand years.

Paso del Rio del Norte, December 27th, 1822, second of our independence.

At the feet of Your Majesty which we kiss.

JOSE FRANCISCO DE BARRIO. [RUBRIC.]
JOSE RAFAEL GARCIA. [RUBRIC.]
FRANCISCO JAVIER BERNAL. [RUBRIC.]
JOSE MARIA BELARDE. [RUBRIC.]
JOSE FRANCISCO CARVAJAL. [RUBRIC.]
JUAN MARIA BARDA. [RUBRIC.]
228 JOSE MARIA CORDOBA. [RUBRIC.]
MARIANO HORCASITAS. [RUBRIC.]
JUAN MARIA PONCE DE LEON. [RUBRIC.]

SAINT CHARLES, 12*th May*, 1822.

Don J. G. Heath, the bearer hereof, who visits the Empire of Mexico with a view of obtaining citizenship, has our official certificate (5) of the 8th inst. I beg leave to state to our brethren of New and old Mexico that Doctor Heath is a gentleman of high standing in this country and much esteemed for his abilities in the learned profession, a sound politician, and man of firm integrity, and is well known to me as such. He is a member of the Catholic Church, zealous, moral, and industrious. That he may be well received and hospitably treated by you is my earnest desire, and may God prosper you.

Compared. Francisco Sosa (rubric).

With respect and esteem.

From your friend, A. McNAIR. [RUBRIC.]

A true copy from the original.

WM. ROSS. [RUBRIC.]

Original retained.

JOHN G. HEATH. [RUBRIC.]

I certify, under the form that is conceded to my office, that Don Juan Gid, a citizen of the United States of America of the North, made the present copy in my presence from the original which he preserves in his possession, and in witness thereof I signed it in Paso, on the 29th of December, 1822, second of the independence of Mexico (6).

JUAN MARIA PONCE DE LEON,
Secretary. [RUBRIC.]

STATE OF MISSOURI, *ss:*

I, Alexander McNair, governor of the State of Missouri, in the United States of North America, do hereby certify to all persons to whom these presents shall come that John G. Heath is a citizen of the said State of Missouri, to me well known as such; that he was a member of the convention for framing the constitution of this State, and that he is at present a member of the house of representatives in the General Assembly of this State from the county of Franklin.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of Missouri to be affixed.

Done at Saint Charles this eighth day of May, A. D. one
229 thousand eight hundred and twenty-two, of the Independence of the United States the forty-sixth and of the State of Missouri the second.

A. McNAIR. [RUBRIC.]

By the governor:

WM. G. PETTUS,
Secretary of State (7).

A true copy from the original.

WM. ROSS, [RUBRIC.]
Anglo-American.

The original papers retained in my possession.

JOHN G. HEATH. [RUBRIC.]

I certify, under the form that is conceded to my office, that Don Juan Gid, a citizen of the United States of America of the North, made the present copy in my presence from the original, which he preserves in his possession, and in witness thereof I signed it, in Paso, on the 22nd of December, 1822, second of the independence of Mexico.

Compared. Francisco Sosa (rubric).

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

STATE OF MISSOURI, }
Franklin County. }

10TH MAY, 1822.

We, the undersigned, citizens of Franklin and Gasconade counties, do hereby certify to all this letter may concern that J. G. Heath, the bearer hereof, is our neighbor, well known to us; that he is a man of honesty, probity, and good demeanor, and highly esteemed by all his acquaintances; wherefore we recommend him

to the attention and hospitality of our brethren in Spanish America, wishing (8) God may prosper you.

MOSES WELTON,
Judge of the County Court, G. C'y, and
JAMES REGANS,
Sheriff, Franklin County.
J. W. HOLLAND, M. D.,
New Port, F. C'ty.
JOHN STANTON,
Judge County Court.
KINKEID CALDWELL,
Judge of County Court, F. C'ty.
P. P. BONLEVARE,
R. P. from Frank. C'ty.
EDWARD SIMON, *Farmer.*
JAMES MILLER, *Farmer.*
ROBERT STROBE, *Farmer.*
DAVID EDWARDS,
Justice of the Peace.
WILLIAM DODDS,
Justice of the Peace.
JOHN NICKO, *Farmer.*
WM. CLARKE, *Farmer.*
DAVID WALDO,
Clerk Gasconade County.
DANIEL WALDO, *Sheriff do.*
J. J. WRIGHT, *Merchant.*
J. WOOLLUMS,
Col. 13th Regiment Militia, Miss.
JESSE McDANIEL,
Corporal 15th Regiment do.
CLAYTON HINTON,
Lt. Col. do.
WM. GOWENS,
Clerk Franklin County.

I certify, under the form that is conceded to my office, that
230 Don Juan Gid, a citizen of the United States of America of the North, made the present copy in my presence from the original, which he preserves in his possession (9), and in witness thereof I signed it, in Paso, on the 29th of December, 1822, second of the independence of Mexico.

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

STATE OF MISSOURI, }
2nd Judicial Circuit, } *ss:*

I am particularly acquainted with J. G. Heath and with most of those citizens subscribing this paper. I know him to be the person therein recommended and the subscribers to be the persons there represented and cordially

Compared. Francisco Sosa (rubric).

join them in recommending said Heath to the attention and hospitality of our brethren in the provinces of Mexico.

RUFUS PETTIBONE,
Judge of the 2nd Judicial Circuit in Missouri.

The within a true copy from the original.

WM. ROSS. [RUBRIC.]

Original retained.

JUAN G. HEATH. [RUBRIC.]

Power.—And in witness thereof I signed it, in Paso, on the 29th of December, 1822, second of the Independence of Mexico (10).

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

Most illustrious common council:

Doctor Don Juan G. Heath, a citizen of the United States of *the* North *of* America, ex-member of the convention that framed the constitution of the State of Missouri and one of those elected to the house of representatives of the State from the district of Franklin, by the most lawful petition that is most proper in law, appears before your honorable body and states that, having arrived in this Empire for the purpose of establishing himself in the province that suits him and temperament, I have found by inquiry in this town the point called El Brasito, up the river from the same ten or twelve leagues distant from this jurisdiction, a place which, although there have been persons who have proposed to settle it in the past ten years, have not accomplished it, nor have they made it pro-
231 duce the advantages which it shows by its fertility (11), all with benefit to this jurisdiction. In this supposition, desirous of uniting myself with my brethren, the faithful inhabitants of this Empire, I proceed to state at once to your honorable body by means of this my sound ideas in the following form: I will bring my family and interests, as well as twenty-five or thirty other families of Christian Catholics, composed of honorable citizens, of good reputation as artisans by profession, for making cloths, cotton domestics, blacksmiths, silversmiths, farmers, and others, all armed in such manner that they can defend themselves without troops and serve as a wall against the Apache Indians, who contiually damage this town. I do not doubt that the graciousness and prudence of your honorable body, because interested in the prosperity and happiness of this section and in observance of the wise and merciful laws (12) of the Empire, will weigh at their true value the many advantages which will result to this town from my propositions, which I will carry out, provided said land is granted to me, for it is not unknown to your honorable body that in all this jurisdiction there is not an individual of profession in his trade, and also that they can never follow them with propriety without having some one from whom to learn them. In view, then, of what I have stated, I pray your honorable body to be pleased to forward this my petition, supported by your report if I should be

Compared. Francisco Sosa (rubric).

worthy of deserving it, to the hands of the imperial government, in order that His Majesty, with his notorious and gracious zeal, may give us the consolation we expect as a remedy for our ills, your honorable body taking into consideration that for the locations of houses, establishments of machinery, subsistence of families for farms (13) I indispensably need two leagues in extent on both sides down the river from said point of Brasito, for I will have the benefit of the timbers and pastures in the same manner as
232 the other inhabitants of this jurisdiction. Therefore I pray you to be pleased to do, in use of the authority you exercise, as I petition in this my application, excusing me for having failed to prepare it on paper of the corresponding seal, as there is none in this town. I protest it is not in bad faith, and what is necessary, etc.

Compared. Francisco Sosa (rubric).

Town of Paso, December 28th, 1822.

JUAN G. HEATH. [RUBRIC.]

I certify that it is a copy taken from its original existing in this department.

Mexico, July 25th, 1894.

GILBERTO CRESPO Y MARTINEZ, [RUBRIC.]
Chief Officer.

CONSULATE OF THE UNITED STATES OF AMERICA,
CITY OF MEXICO.

I, Thos. T. Crittenden, consul general of the United States of America at the city of Mexico, federal district, Republic of Mexico, and resident thereof, do hereby certify that I am personally acquainted with the signature of Gilberto Crespo y Martinez, and that the signature on this paper hereto annexed is his true and genuine signature. Said attestation is in due form and is entitled to full faith and credit for the uses and purposes therein expressed.

Witness my hand and official seal of this consulate general this 28 day of July, A. D. 1894, and that said Gilberto Crespo y
[SEAL.] Martinez is the proper custodian of said department de Fomento.

THOS. T. CRITTENDEN,
Consul General.

233 I hereby certify that the foregoing is a correct translation of the original document in the Spanish language, of which it purports to be a translation, except that part on page 3 beginning "Saint Charles" and ending with "John G. Heath, rubric;" that part beginning "State of Missouri" and ending on page 4 with "John G. Heath, rubric;" that part on page 4 beginning "State of Missouri" and ending with "Franklin county," and that part on page 5 beginning "State of Missouri" and ending "Juan G. Heath, rubric," and the certificate of the consul general of the United States in the city of Mexico, all of which exceptions appear in the aforesaid

document, written in the English language, and excepting also the figures in parenthesis, which indicate the paging of the original.

HENRY O. FLIPPER,
Special Agent, Dep't of Justice, U. S. Court of Private Land Claims.

234 EXHIBIT — FOR PLAINTIFFS.

Letters of Guardianship.

STATE OF ILLINOIS, } ss:
Knox County, }

In the County Court, January Term, A. D. 1893.

The People of the State of Illinois to James Scott, of said county, Greeting:

Whereas at the November term of the county court of said county, A. D. 1892, holden at Galesburg, you were, by order of said court duly entered of record on the 1st day of December, 1892, duly appointed guardian for L. Ethel Scott, Lucretia Scott, and Mabel Scott:

Trusting in your fidelity, therefore the said court does by these presents constitute and appoint you to be guardian unto said minors and authorize and empower you to take and have the care of their person and the custody and management of their property, frugally and without waste or destruction to improve and account for the same in all things according to law.

Witness M. O. Williamson, clerk of the said county court, and the probate seal of said court, hereunto affixed, at Galesburg, this 11th day of January, in the year of our Lord one thousand eight hundred ninety-three.

[SEAL.] M. O. WILLIAMSON,
Clerk of the County Court,
By FRANK L. ADAMS, *Deputy.*

I, M. O. Williamson, clerk of said county court, do certify that the foregoing are true and full copies of the original letters in my office remaining.

Given under my hand and seal of the said court this 24th day of January, A. D. 1893.

[SEAL.] M. O. WILLIAMSON, *Clerk,*
By ZETTIE MEAD, *Deputy.*

235 EXHIBIT U FOR PLAINTIFFS.

Know all men by these presents that we, Robert W. Sherman and Alemedia Sherman, his wife, of Kennett, Dunklin county, Mo., in consideration of the premises hereinafter stated, do hereby sell, transfer, and convey to J. B. Cessna, of Hastings, Nebraska, $\frac{1}{16}$, one-sixteenth, of all our right, title, and interest in the following piece or parcel of land, situated in Donna Ana county, New Mexico, known

as the Bracito tract, granted to Juan Gid, Dr. John G. Heath, by the Mexican government April 17, 1823, reported by the surveyor general as claim No. 505 of Mexican and Spanish land grants and in the archives No. 410, for the purpose of paying costs and expenses in the prosecution of our said claim in the land aforesaid, and we further sell and convey to the said J. B. Cessna the one-half of our right, title, interest, and claim in said tract of land aforesaid as fees in the prosecution of our said claim in the land aforesaid; the said J. B. Cessna to have the right to sell and convey the said $\frac{1}{16}$ part of our interest to any party or party who will raise the costs and expenses of said suit, but not to make us personally liable for said cause and expenses farther than the said one-sixteenth interest.

We hereby revoke any power of attorney or deed heretofore given to Mansfield and Palmer or to any one else relative to this land.

The said J. B. Cessna hereby promises to perform faithfully, earnestly, and diligently his employment in the prosecution of this claim.

Witness our hands and seals this 6th day of October, A. D. 1892.

ROBERT W. SHERMAN.
her
ALMEDIA C. SHERMAN.
mark.

Signed, sealed, and delivered in the presence of—
CHARLES J. BARHAM.
J. B. HARTMON.

STATE OF MISSOURI. } ss:
County of Dunklin, }

Personally appeared before me, Charles J. Barham, a notary public within and for said county and State, Robert W. Sherman and Almedia C. Sherman, his wife, whom I know to be the identical person who signed the foregoing deed in the statement of writing, and acknowledged the same to be their free act and deed to the
236 end that the same might be recorded as such; and the said Almedia C. Sherman, being examined separate and apart, said she voluntarily acknowledged said instrument to be her act and deed without any compulsion or coercion from her husband.

Witness my hand and notarial — this 6th day of October, A. D. 1892.

[SEAL.] CHAS. J. BARHAM, [SEAL.]
Notary Public.

My term expires 6, 10, '93.

237 EXHIBIT W FOR PLAINTIFFS.

Extract of Proceedings of Departmental Assembly.

Next were read a letter from the ayuntamiento of El Paso and the accompanying report which it made to the president in regard to land which it had given to the Anglo-American, Juan Gid,

at his request, and another petition made to the same body by Senor de Albo asking for pasture land for a herd of cattle, sheep, and horses, it being reduced to two sitios of a square league each, and the details of both petitions having been taking into consideration, after a full discussion it was decided that as to the grant of land made to the American the ayuntamiento of El Paso should be reprimanded for the reason that that body had acted hastily and with little wisdom in giving away land that belonged to the people of that town, to the great injury of all its inhabitants, and, besides, the law of colonization being at that time repealed, and the said ayuntamiento, to avoid making itself responsible for damages which the stranger would claim if the families come to settle in this country which he has offered to bring, should notify the aforesaid Gid through the medium of the representative of the United States that the possession which was given him at the Bracito was given by reason of a doubtful interpretation and wrong understanding about the law of colonization already repealed, and that those lands belonged to the jurisdiction of El Paso.

JOSE ANTONIO VISCARRA, *President.*

Juan Bautista Vigil, departmental secretary:

I hereby certify that the foregoing, on four pages, have been carefully compared and is a true copy of a portion of the proceedings of the provincial deputacion of New Mexico for the 17 of June, 1823, now on file in my office and of the official translation of the same. Done in Santa Fé this 5th day of January.

E. T. HOBART,
Surveyor General.

238 DEFENDANTS' EXHIBIT 2.

Letter Transmitting Petition and Proceedings to Governor.

Mr. GOVERNOR: In consequence of the resolution, made by this corporation on the 3rd of April of this year, upon the petition of Don Juan Gid, an Anglo-American, I forward to Your Excellency a copy of the minute and application, together with the subsequent proceedings up to the full execution of article 4 of the decree of January 3rd of this year relating to colonization, but as the full execution of this law is new in these countries, it has occasioned in two particulars the protest made by Don Agapito Albo, deputy of the province and a lawyer in this town, which I also enclose for the superior information of Your Excellency.

Immediately thereafter, under date of April 17th there were presented to this corporation two petitions of residents of this town praying that to them also and by reason of preference there be granted to each one at least an hacienda up the river on this side of the Bracito. The imitative circumstances of the new settlers and the fact that this corporation has no municipal ordinances regulating the distribution of land that may be useful and beneficial in promoting settlement, agriculture, arts, etc., place this corporation under the necessity of making known to your superiority the

resolution, that Your Excellency may be pleased to dictate whatever may be your pleasure in the matter, whether it be by yourself or after consulting the most excellent provincial deputation.

Session of today, 24th of April, 1823.—This place having granted it by the most excellent provincial deputation that territory — extends up the river as far as San Diego, distant 40 leagues, resolved as a benefit to this public bring before the government the following articles for its approval, if it should find it convenient.

1st. That inasmuch as up the river there are only the woods, these and the pastures shall always be common both to the families of the colonists that have been admitted in aggregation and to those of this jurisdiction.

2nd. That the farming lands on both sides of the river be not wasted by giving the property therein to stock-raisers, and that those who apply for them be obligated in the terms of the law to cultivate them, to which end it is proper to caution the public that, in asking and granting these lands, order and proportion be observed, for which a superior regulation is especially desired.

3rd. That an effort be made to keep the 30 families of colonists in the center that all those of this jurisdiction may have the advantage of the model of their industries, arts and instruction which they promise, and in addition to this, and that the intake of water and acequias they shall construct above be used by all those below them who desire to imitate their industries and farms, it being understood that this corporation considers as sufficient without admitting others, the master artisans who are to settle at Bracito, to encourage the imitation of the industry and arts if all the old residents of the jurisdiction who desire and can cultivate the farming lands there on both sides from here to San Diego and by which there will be obtained the happiness of all, and besides this a great restraint of the Apaches in their transit from this settlement to the interior of the province.

4th. That at 4 or 5 leagues distance in circumference of this town property in lands be given to nobody to the extent offered by the decree of colonization, the timber and pasture up the river being always reserved, and in the matter of water there should always be municipal regulations for its distribution and good order, and it will be convenient for these old inhabitants of the jurisdiction to acquire property in the farming between here and San Diego,
239 leaving as we have said, in the middle those who are to be the instructors in our agriculture and industry.

5th. In order to avoid jealousies among private individuals and interests of some breeders of stock who generally are prejudicial to these in the development of agriculture, and arts, it is observed that this jurisdiction is just beginning, and at the same time gets poorer and poorer if it is not given or provided with industries and arts, and in order to have them in its territory a means therefor is that adopted by virtue of article 4, inasmuch as to reject it, difficulties would hereafter arise both because of the scarcity in the national exchequer and the poverty of these residents, for whom this ayuntamiento, to which it very closely belongs to look out for their hap-

piness, has without delay, put in operation the franchise of the law; this corporation stating, nevertheless, that if it has erred in anything, the concession has been made subject to the superior determination. Besides this, it had in mind the fact that the new settler came with a recommendation in his passport from the assembly of the United States, the Government of which was the first that recognized our glorious independence and has admitted in its court the ambassadors of the Empire, recognizing them with every formality.

This ayuntamiento has found it convenient and worthy of public confidence to bring all of the foregoing before Your Excellency and the most excellent provincial deputation, that you may, in view thereof, order what may be just and convenient to remove uncertainties and to proceed with certainty in every matter, which is what is desired.

God preserve Your Excellency many years.

Paso.

JOSÉ YGNO. RASCON.
JUAN MARIA PONCE DE LEON, *Secretary.*

240 DEFENDANTS' EXHIBIT 4.

Disapproval by Departmental Assembly.

OFFICE OF THE SECRETARY OF THE PROVINCIAL DEPUTATION OF NEW MEXICO.

In the session of the 17th of the present month the acting governor of this province, Captain José Antonio Vizcarra, presented to this deputation the reports which your honorable body makes to him in an undated official communication which said chief received; and he also presented another official letter dated the 26th of last April, accompanied by a copy of the proceedings had by your honorable body in giving to the foreigner Mr. John Heath at the Bracito, possession of land belonging to the people of that jurisdiction.

The deputation in the same session resolved to express to your honorable body the surprise it felt at the violent and mistaken procedure with which you conducted yourselves in giving land to foreigners not only with prejudice to the inhabitants of that jurisdiction but also in violation of the same law of which your honorable body availed itself in order to carry into effect the possession referred to, thus opening the door to the continual complaints of its people: this deputation refraining from making other observations to your honorable body, on account of the colonization law which was the moving cause in the concession of the Bracito land to the said Heath having been repealed; but proceeding to direct your honorable body that in order not to make itself responsible for damages which the foreigner might claim if he should introduce into this province the families that he offers to bring, it should notify the said Heath through the plenipotentiary of the United

States resident in New Mexico, or in some other manner which it may deem more prompt and effective, that the possession which has been given to him at the Bracito, belonging to that jurisdiction of El Paso, was through a mistaken opinion and wrong understanding in relation to the colonization law already repealed.

And I communicate it to you by direction of the said deputation, with the understanding that I shall communicate to you the decision that may be arrived at when the petition of Mr. Albo and the other persons of that town shall have been discussed, your honorable body notifying me of the receipt of and compliance with these instructions.

God preserve your honorable body many years.

Santa Fé, June 19, 1823—The third year of independence and the second of liberty.

FRANCISCO JAVIER CHAVEZ. [SCROLL.]

JUAN BAUTISTA VIGIL, [SCROLL.]
Deputy Secretary.

241 DEFENDANTS' EXHIBIT 5*a*.

Article 4.

Original Spanish.

Art. 4. Las familias que por si mismas vengan á establecerse, se presentarán inmediatamente al respectivo ayuntamiento del lugar en que quieran radicarse, para que conforme á las órdenes con que se hallen del Gobierno se les designe por aquel cuerpo el terreno que les corresponda segun la industria que van á plantear.

241*a* DEFENDANTS' EXHIBIT No. 6.

Mr. Tipton's Translation.

Art. 4. The families who come of themselves to settle shall present themselves immediately to the respective ayuntamiento of the place at which they desire to establish themselves in order that, in conformity with the orders which they have from the executive, there be designated to them by that body the land to which they are entitled according to the industry which they are going to undertake.

241*b* DEFENDANTS' EXHIBIT No. 7.

Decree of April 8th, 1823.

The sovereign constituent congress of Mexico, in the session of yesterday, decreed the following:

1. That the coronation of Agustin de Iturbide being an act of violence and of force, and void in law, there is no occasion to discuss the abdication he makes of the crown.

2. Consequently, it also declares as void the hereditary succession

and the titles that have emanated from the coronation; and that all the acts of the late government, from the 19th of May to the 29th of March last, are illegal, but subject to revision by the present congress for their confirmation or revocation.

242 DEFENDANTS' EXHIBIT No. 8.

Decree of April 11th, 1823.

In this (order) the government is instructed, if it does not find it inexpedient, to accede to the application of Stephen Austin to confirm his concession to establish 300 families in Texas; to act upon other applications of like nature, and to suspend until a new resolution the colonization law enacted by the instituent council (junta).

243 DEFENDANTS' EXHIBIT No. 9.

Documents Relative to Heath Grant.

Petition.

Dr. Don Juan Gid, citizen of the United States of North America, in the best legal form allowed by law, appears before your honorable body and states: That, not having received up to date any answer to the communication of December last of last year, which I presented to the former ayuntamiento, the predecessor of your honorable body, which (communication), approved in all its parts, was forwarded to His Imperial Majesty by the same, for which reason and because of the increase (ampleacion) of the power which is given to your honorable body by the law of colonization which was issued by the national instituent assembly (junta) of the Empire on the 3rd of January of the present year: For these reasons I again have recourse through this, repeating my request to your honorable body, adding that I offer to bring for the settlement of the land of El Bracito, which I ask may be given to me, thirty families of Christian Catholics, and among them blacksmiths, gunsmiths, silversmiths, carpenters, tailors, shoemakers, saddlers, architects, mathematicians, chemists, mineralogists, surgeons, doctors of medicine, and to establish a hospital with its corresponding drug store and proper stock therein, with the necessary instruments for all operations: also to build a warehouse supplied with all kinds of merchandise for wholesale: the necessary machines for the manufacture of cotton and cloth goods, another for the manufacture of gunpowder, offering, until payment of the expense of transportation, to furnish the amount of this article all this jurisdiction may need at the very low price of one dollar per pound; it being first class for the use of arms: with the understanding that in all the said trades there shall be admitted for instruction the youths whose parents may see fit to dedicate them thereto; the children of this country (suelo) having the preference thereto.

244 In view of what has been said and because, for establishing the said machinery, utilizing the farms, grazing stock

and for the other field interests, it is indispensable that it have the extension which is necessary therefor, it behooves me to demonstrate to your honorable body that the land which may be assigned to me, limiting me to the smallest amount, be at least enough for (sea lo menos para) an hacienda, and that said designation be made for me on both sides, that is to say, that it be on both sides of El Bracito, because the said land being broken it is necessary to leave out various portions of it. I also propose to your honorable body that until time permits whatever else may be desirable this settlement be attached to the parish of this jurisdiction: likewise that the pasture and woodlands be common, with the same privilege as other people of this locality: recommending that it be without prejudice to those farms (sementeras), and that the petitioner be the person to whom is entrusted the distribution of said lands, he being considered the legitimate justice of said families.

Candor of mind being what I most appreciate, and to join myself with my brethren, the faithful inhabitants of this Empire, living always in the simple peace, in order to dispel all rumors of hatred, I ask your honors that, you being pleased, and in order that the said law of colonization be executed in all its parts, notice of this, my petition, be given to the individuals of this jurisdiction, in order that all these gentlemen who like may better or equal it with a view to the right of preference, in which act your honorable body, to whom is entrusted the power of father of this country (patria) will weigh at their true value, the incalculable benefits that result from my petition whereupon, far from seeking means to deprive it thereof, it would be encouraged in every way to procure their increase.

Wherefore, I ask and petition your honorable body to be pleased to accede to what I petition, being pleased to pardon the fault that this my petition is not upon paper of the proper seal, for there is none in this place, I being ready to pay the fees that belong
245 to the national treasury. I protest that I do not act in bad faith, and the necessary, etc.

Paso, April 7th, 1823.

JUAN GID.

Proceedings of Ayuntamiento.

COUNCIL HALLS OF EL PASO, *April 3rd of* 1823.

The petition of Don Juan Gid being presented it was admitted by the illustrious corporation under the terms which it agreed upon in the minutes of this day, which when seen by the said Don Juan, he accepted, and therefore, on Sunday, the 13th instant, the said petition and the minutes will be made public in the manner customary in this place for the purpose they specify. Don José Ygnacio Rascon and Don José Morales, constitutional alcaldes, executors of the resolutions of their honorable body, thus decreed and signed before me, the secretary of the corporation, to which I certify.

JOSÉ YGNACIO RASCON.

JOSÉ MORALES.

JUAN MARIA PONCE DE LEON, *Secretary.*

At the town of El Paso del Norte on the 13th day of the month of April, 1823, having assembled in these consistorial halls those of the illustrious ayuntamiento, and a large number of the residents who were previously summoned in the customary manner, the petition of Juan Gid and the minutes of the resolution were read, of which the people once being cognizant and being asked by the first alcalde as to whether they were pleased with the new neighbors who contemplated joining this jurisdiction, they answered with many voices in the affirmative showing pleasure and no opposition. Wherefore, immediately it was determined that, on the 16th day of the present month, in consequence of the resolution the señor alcalde of second election, the public attorney (sindico personero) Don
246 Lorenzo Provencio, and the secretary of the corporation, shall go with the petitioner to the place of El Bracito for the purpose of making the surveys and to execute (practicar) what had been resolved by their honorable body, by virtue of the sovereign decree of the 3rd of January relative to the colonization system. And by this action the two alcaldes so determined and signed it before me, the public secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JUAN MARIA PONCE DE LEON, *Secretary.*

COUNCIL HALLS OF EL PASO, *April 15th*, 1823.

Don Agapito Albo, deputy to the most excellent corporation of this province, who resides in this town, presented himself in the character of attorney for this corporation and said: that on account of his duties, and being commissioned by the district, he represented that this ayuntamiento having resolved to make a grant to the families whom Don Juan Gid proposes to settle in El Bracito, it appeared to him that with the farms and machinery offered by the new settlers in a few years they might be prejudicial to the old inhabitants in all this jurisdiction, for the reason that when the waters would be turned off above and consumed in those farms they would not reach those other ones in the volume desired. Which suggestion being noticed by the members of this body they proceeded to discuss it, and it was determined by all the votes unanimously that the petitioner Don Juan Gid be called, who being present, said that if the case would happen when there would be scarcity of water in this copious river he and his families were of the understanding that they had to govern themselves by the wise and prudent laws of the Kingdom and the regulations of the ayuntamientos to whom by these it belongs to see that the waters are well distributed. In view of this, and because the said Don Juan again referred to the subjection to the laws and ordinances of the Empire, it was
247 resolved to continue the execution of the decree of the 13th instant, which (decree) was given in consequence of the first order of this honorable body: and by this order they thus determined and ordered it executed, the gentlemen composing this illus-

trious corporation signing it before me the secretary of the corporation, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSÉ FRANCISCO CARBAJAL.
JUAN MARIA BARELA.
ANTONIO PRUDENCIO.

JOSÉ MARIA GARCÍA.
SATURNINO AGUIAR.

JOSÉ MANUEL GARCÍA.
JUAN JOSÉ GIL.
LORENZO PROVÉNCIO.
JOSÉ ALBARES.
JUAN MARIA PONCE DE LEON, *Secretary.*

COUNCIL HALLS OF EL PASO, *April 13th*, 1823.

The action taken in order to proceed to the execution of the survey and to the possession of the land of El Bracito, which is to be given to Don Juan Gid, being concluded, let the expediente in the condition in which it is found be delivered to the commission composed of Don José Morales, second alcalde, the alderman Don José Maria Belarde, the public attorney, Don Lorenzo Provencio, and the secretary of the corporation Don Juan Maria Ponce de Leon, in order that when their commission to conclude, according to the foregoing writ, they may return it to this corporation to proceed to the other matters that may follow. And by the present decree the illustrious ayuntamiento thus resolved, the president thereof signing it before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JUAN MARIA PONCE DE LEON, *Secretary.*

248 PLACE OF EL BRACITO, *April 17th*, 1823.

Having accepted the commission, it appears from the proceedings, was made of four individuals by the illustrious ayuntamiento in order to carry into effect the proceedings had in this expediente, we came to this place, where, in accordance with what is commanded, designating as the central point of the "hacienda" of which Don Juan Gid is going to take possession, the mouth of the ditch of El Bracito (boca acequia del Bracito), he in evidence thereof, cut off with an axe the bark of two cottonwood trees, where, the wood being left bare, he put: Hacienda of Don Juan Gid, and the year of the date upon both; and then, the commission and the party in interest, Don Juan Gid, being present, they appointed for measurers (chainmen) Don Francisco Lucero and Don José Roybal, who offered to comply faithfully with the duties of their charge. That, in order to commence it, there was given to them and they received

an iron chain in good condition which being measured with all care had eleven varas of three geometrical feet, as is provided by the colonization plan in article —. Immediately the first measurement was made about one o'clock in the afternoon over the north course (having known this point with all exactness because the operation was directed by an Anglo-American mathematician, who with the compass (abujon) observed the courses) the same terminating at four o'clock the same afternoon at the summit of a hill for the sake of straightness, where a cross-monument was placed, and at the foot of it Don Juan Gid buried a stone inscribed with his name and the date, which he recognized as his lawful boundary, and complete measurements of two leagues and a half of five thousand varas each. And returning to the east (course) about three o'clock in the afternoon the measurement was made with the needle to the course (al viento), for there was no known water upon that land that may make it desirable for settlement or for "hacienda:" and it was deemed to have the two and a half leagues upon a mount (cerro) called La Cueva, in the Organ mountains; and taking the measurement about half past four o'clock in the after-
249 noon at the cross-monument on the west, this proceeded until sunset, crossing in this interval the road that goes to the Rio de las Salinas, and going down a ridge (ceja) one league and three "cordeles" of one hundred and ten varas was completed. And at sunrise the survey was again resumed until completing the two leagues and a half, which was on a hill belonging to the Mount Roblecito (Cerro de Roblecito) between another black mount (cerro proeto) which is to the left, and a red one to the right, where the same formality as in the other monuments the corner was fixed at that point. And about twelve o'clock of day the commission, the party in interest, and the measurers (medidores) returned to the central point of said "hacienda," from where at about three o'clock in the afternoon the first measurement on the south course was made and it was proceeded with until sunset, when one league and three cordels of one hundred and ten varas were completed. At sunrise the measurement was continued until completing the two leagues and a half, which was in a glen (cañada) that runs up from the river towards the plain below La Mesilla and opposite the Ochoa bluffs where the cross-monument was placed with the same formalities as the others; and the line from this to the south and west being taken with the needle only, the measure is given to where the two and a half leagues may terminate, for the reasons stated in that taken on the east course and terminated at the Cueba de los Organos, this one ending at half past nine o'clock in the day. And taking the direction to the east about ten o'clock of the same day, it measured nineteen cordels, of one hundred and ten varas, as far as the road that goes to El Cobre, and as far as the river fifty-one (cincuenta y una) where for the reason that it was the hour of midday the said measurement was suspended: and that being passed, it was resumed at about two o'clock in the afternoon until completing the two and a half leagues which terminated upon a hill that lies to the right of the Trujillo marshes, a little beyond these, and oppo-

site the last mount of the El Paso mountains, which is called the Paso of the Alamitos, and in the direction of the Crucitas watering place, where with the customary formalities
250 the corner monument was placed about three o'clock in the afternoon with which the measurements with the said vara of three geometrical feet were concluded; at which proceeding the alcalde commissioner in legal form asked the measurers if they acted with the lawfulness they had promised the time of making the first measurement of the "hacienda," which they had concluded: to which they answered that so they had done, and that they entertain no doubt or responsibility, that they have done it as they had promised. Then the party in interest, Don Juan Gid, was asked by the commission if he was satisfied with the survey concluded in that "hacienda," into the lawful possession of which he was to enter according to the colonization laws; to which he replied, that, having been present at the formality with which the survey of his land had been proceeded with, he was satisfied in all its parts. That being the case, and there being no claim made to suspend the course of these proceedings, the present commission place Don Juan Gid in lawful possession of said "hacienda," stating to him that the farm lands which he has in it are the greater part of the bottom lands of the river; that he must not use these for any other purpose except for planting all kinds of edible grains and to supply his trades with the necessaries for agriculture in every matter. That for the raising of live stock of all kinds and horses, what is given to him outside of the said bottom lands of the river is considered sufficient. Charging him also that whatever waters he may take out to run the machines which he proposes to erect, and the others that may occur to them, he must conduct them until they return to their center, so that this town and the adjoining ones of which it is the head may not in any of its parts be made to suffer. Intimating to him lastly that, that for which the four individuals present were commissioned, they concluded with this act, in which what has been done until now was signed by the alcalde Don José Morales, Alderman Don José Maria Belarde, Public Attorney Don Lorenzo Provencio, the interested party Dr. Juan Gid, the measurer Don Francisco Lucero, his companion José Roybal
251 not doing so because he does not know how to sign, but he stamped with his own hand a sign of the cross, before me the secretary of the corporation, to which I certify.

JOSÉ MORALES.
JOSÉ MARIA BELARDE.
LORENZO PROVENCIO.
FRANCISCO LUCERO.
JOSÉ ROYBAL.
JUAN MARIA PONCE DE LEON, *Secretary.*

Having concluded the commission that the illustrious ayuntamiento entrusted to us relative to matters stated in the present expediente, let this be returned to the said corporation in order that

that honorable body may do as indicated in the order of the 13th instant; and by this present provision the four commissioners thus determined today, the 21st of April, 1823, before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ ——RENZO PROVENCIO.
JUAN MARIA PONCE DE LEON, *Secretary.*

COUNCIL HALLS OF EL PASO,
April 22nd, 1823—third of our independence.

This ayuntamiento having on this day received that which by its order was to be executed by the commission appointed from its midst to do the surveying that was to be done in the land of El Bracito, this being five leagues in each direction, the whole of it composing an "hacienda," according to article 5th of the colonization plan; which land was granted by this ayuntamiento to Don Juan Gid for the purpose of settlement as stated afterwards, and he being satisfied with what was done in all its parts by the said commission, it was entered as a minute in due witness thereof the
252 president and other members of which that is composed signing it before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSÉ FRANCISCO CARBAJAL.
JUAN MARIA BARELA.
ANTONIO PRUDENCIO.
JOSÉ MARIA GARCÍA.
SATURNINO AGUIAR.
JOSÉ MANUEL GARCÍA.
LORENZO PROVENCIO.
JOSÉ ALBARES.
JUAN MARIA PONCE DE LEON, *Secretary.*

Yesterday the corporation being in session, I offered to that honorable body various suggestions that it would be prejudicial to this community and the neighboring ones if the giving of property for hacienda to the petitioner, Don Juan Gid, was carried into effect in the lands known as the El Bracito: stating in detail the causes occasioning the harm, to which I was answered that the matter would be discussed by your honorable body, and that its decision would be made known to me by showing me the proceedings had for that purpose. But that has not been done. From the statement that I enclose it appears that today possession is to be given to the said Gid, ignoring the form of what has been newly resolved by your honorable body. Among the many things that I suggested one was that it appeared to me unwise that this matter should be

acted upon at once, and that it should be duly considered for greater certainty. Doubtlessly your honorable body has not borne in mind that whatever property the ayuntamientos give to the citizens of the Empire, it is necessary under the law to publish thirty proclamations on as many days, to await the claim that may allege a better right: why not so in this case which I find to be of greater necessity. This omission, in my opinion, makes me apprehend that your honorable body hurries with gigantic strides perhaps
253 to have that annulled which you are going to transact, and for which you will be responsible to the claims of public law, as it is enunciated in the said statement, which for the reason that it is made a part of the proceedings, to make a demand holding me and your honorable body responsible, it is indispensable for me to take this step to relieve myself of it; and in that case your honorable body will be responsible and not I, attaching this and that which I enclose to the proceedings transacted.

God preserve your honorable body many years.

Paso, April 16th, 1823.

AGAPITO ALBO.

Señor president and members of this illustrious ayuntamiento.

(*Justice's Order.*)

COUNCIL HALLS OF EL PASO, *April 17th*, 1823.

As prayed by the party let it be answered and added to the expediente.

RASCON.

(*Petition Presented to Don Agustin Albo by Two Citizens.*)

Señor Provincial Deputy Don Agapito Albo:

Don Francisco Montes, alternate deputy, and Don Antonio Orcasitas, both residents and citizens of this town, state to Your Excellency in the best form, that it having come to our notice that tomorrow the 16th of the present month, members of the corporation of the ayuntamiento of this said town go to give possession to Don Juan Gid, Anglo-American, of the territory of El Bracito on which is to be designated to him the ground for an "hacienda," which must consist as he states in the same, of five leagues square, and to give him the absolute ownership (propiedad) thereof on the conditions (proposiciones) that he states in the same to the said illustrious ayuntamiento, and it appearing to us that it must be burdensome to the inhabitants of this town and the neighboring ones, for the reasons which, if it be necessary, we will go and demonstrate,
254 we bring it to the notice of Your Excellency in order that you may be pleased to make it known to the said ayuntamiento, stating at the time what you may deem proper in the matter. And if Your Excellency considers it worth while, make it appear to the said corporation to be pleased to lend attention to the sug-

gestions that occur to us. It being an indispensable circumstance, in our opinion, in order to avert a damage of so great proportions, and in case of its not acceding to this our humble supplication, it is necessary for us to hold Your Excellency or the illustrious ayuntamiento which proceeds in the matter responsible according as there is motive therefor under the laws; being pleased to receive this our solicitation upon common paper, as none of any seal can be found. We swear not to be in bad faith, and in the necessary and so forth.

Paso, April 15th, 1823.

FRANCISCO MONTES.
SANTOS ORCASITAS.

(*Justice's Order.*)

This suggestion is of no value because it is contradicted by the writing of Don Santos Orcasitas, presented to the first alcalde on the 19th of April, which is attached to the expediente, and only Don Francisco Montes remains pending (pendiente).

JOSÉ YGNACIO RASCON.

(*Communication in Reply to Don Agapito Albo.*)

COUNCIL HALLS OF EL PASO OF THE RIO DEL NORTE,
April 17th, 1823—third.

On this day a paper was opened which the señor deputy of this province, residing in this town by permission, Don Agapito Albo, sent yesterday the 16th of the same to this illustrious ayuntamiento, in which were found a communication containing a statement made to said gentleman by the private citizens, Don Fran-
255 cisco Montes and Don Santos Orcasitas, both documents having reference to the gift and grant which in conformity with law this ayuntamiento has made to Dr. Juan Gid in the lands of El Bracito: and the matter having been discussed with the care the circumstances require, it was resolved to answer the said Don Agapito Albo with regard to his communication of the 16th instant as follows: This ayuntamiento considered that it was its duty to comply, at the instance of a party, with the decree of the 3rd of January of this year, issued by the instituent assembly, sanctioned by His Imperial Majesty and ordered published and complied with, by the governor of this province. For this reason and because also it judged that it was beneficial to these poor people who stand in such great need of learning trades for their improvement, to put in execution the petition of Dr. Juan Gid, the term of three days having expired, it is resolved today to answer the provincial deputy Don Agapito Albo, residing by permission in this town, in the matter of the communication which he addressed to this corporation in accordance with the suggestion made to him by the individuals he names: stating that it is not in the power of this corporation to undo what it thinks it has done in conformity with law and to the benefit of the people who are immediately under its charge. Thus this honorable body resolved, and I communicate it to Your Excellency

in reply to the communication of the 16th instant which Your Excellency was pleased to forward to this body, which was received yesterday the 16th of the same. God preserve Your Excellency many years.

Paso, April 17th, 1823. In the council halls.

JOSÉ YGNACIO RASCON.
EUTIMIO VALVERDE,
Secretary ad Interim of the Corporation.

And in due witness the session of this day agreed unanimously, the said documents remaining in this archive, and, with the exception of the eighth alderman, Don Juan Gil, because he said that he did not want to be responsible, the president and the other
256 members who compose this corporation signed it before me the secretary *ad interim*, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSÉ FRANCISCO CARBAJAL.
JN. MARIA BELARDE.
ANTONIO PRUDENCIO.
JOSÉ MARIA GARCÍA.
SATURNINO AGUIAR.
LORENZO PROVENCIO.
JOSÉ ALBARES.
JN. MARIA PONCE DE LEON, *Secretary.*

Señor alcalde of first election:

Don Santos Orcasitas, resident of this jurisdiction of El Paso, before Your High Honor, in the best form permitted in law, appears and says: That, being a weak man by human nature itself, he must be more prone to error than to accuracy, and having had an attack of lethargy, not very long, and at the moment that he is beginning to recover or to return to himself, he sees that the light which guides and admonishes him to enquire of the first authority to make known to him what harm can result to him from being one in opinion with the authority; none: and thus awakening, as they say, the private opinion is abandoned and detested, and that of the authority is assented to in all its parts: having the kindness to receive this, my solicitation, upon this common paper as there is none of any seal. I swear not to be in bad faith, and what is necessary, etc.

Paso, April 19th, 1823.

SANTOS ORCASITAS.

Received. Let it be attached to the expediente.

RASCON.

COUNCIL HALLS OF EL PASO, *April* 23*rd*, 1823.

257 Today Don Juan Gid has presented a map made by the mathematician Don Guillermo Box, by observing the courses and in conformity with the measurements made of the land of El Bracito. And as it appears to this corporation very useful to attach it to this expediente, for the clearness and certainty at all times of what has been done, let it so be done; and by the present order of this illustrious ayuntamiento, thus it so determined and ordered and signed it before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSE FRANCISCO CARBAJAL.
JUAN MARIA BARELA.
ANTONIO PRUDENCIO.
JOSÉ MARIA GARCÍA.
JOSÉ MANUEL GARCÍA.
SATURNINO AGUIAR.
LORENZO PROVENCIO.
JOSÉ ALBARES.
JUAN MARIA PONCE DE LEON, *Secretary.*

COUNCIL HALLS, *April* 25*th*, 1823.

It appearing to this ayuntamiento to be desirable to aggregate to the expediente the minute of the resolution which it adopted on the 3rd of the present month relating to the concession of the land of El Bracito to Don Juan Gid, let it so be done for greater clearness and information in the matter. And by the present order, the president of this illustrious corporation so decreed, ordered and signed it, before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JUAN MARIA PONCE DE LEON, *Secretary.*

COUNCIL HALLS OF EL PASO, *April* 25*th*, 1823.

258 The present expediente in which there has been granted to Don Juan Gid, Anglo-American of the United States, the lands of El Bracito for settlement, being considered by this ayuntamiento as closed, proceed to what is to be done under the tariff in force in this ayuntamiento and by its secretary that Juan Gid may know what fees he is to pay for what has been done therein placing the original in the archive as a perpetual testimony, but nevertheless to this shall be sent, together with a certified copy, by the first mail or safe-conduct to the governor of this province for his superior information; another of the same kind being given to the party in interest for his protection. And by the present order the president

and members of this corporation so determined and signed it, before me, the secretary, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSÉ FRANCISCO CARBAJAL.
SATURNINO AGUIAR.
JOSÉ MANUEL GARĆIA.
LORENZO PROVENCIO.
JUAN MARIA PONCE DE LEON, *Secretary.*

It is a copy of the original expediente which on petition of Don Juan Gid was made in order to grant to him for settlement the land of El Bracito, in accordance with the colonization plan, together with what is afterward stated: which original remains accordingly in the archive, to which I certify.

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

(Here follows plat, to which is attached the following:)

I, Guillermo Box, citizen of the United States of *the* North *of* America, master mathematician from the State of Missouri: certify in legal form that the foregoing plat (papa) of the place of
259 El Brito for the settlement of artisans whom Dr. Juan Heath is to bring in, is made by me by order of the gentlemen commissioned by the illustrious ayuntamiento of this jurisdiction of El Paso, and in due entries thereof I signed it in said town on the 19th of April, 1823.

GUILLERMO BOX.

It is a copy.

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

COUNCIL HALLS OF EL PASO DEL RIO DEL NORTE,
April 3rd, 1823—third of our independence.

Session of this day, Don Juan Gid, doctor of medicine, of the Anglo-American nation from the States (*sic*) of the Missouri, appeared requesting to know the result of the petition which he made the former ayuntamiento on the 27th of December of last year, through the secretary of state to His Imperial Majesty, and he is answered: that no immediate reply has been received but that the government of this province, through the captain Don José Antonio Viscarra, political and military chief, in an official communication of the 2nd of March, sent the decree of the 3rd of January of this year commanding it to be published and obeyed; which decree was issued by the national instituent assembly (junta national instituyente) and sanctioned by His Imperial Majesty, the thirty-two articles of which treat of colonization matters. These were read to the said Don Juan Gid; and being made acquainted with them, he today makes a new petition asking that by virtue of the law and its privileges he may be given an "hacienda" in the same land

that he has already asked for, offering to perform everything he promises in the said petition, for the good of this town and the Mexican nation.

This corporation having in mind the said colonization laws and the said proposals, which it considered beneficial and useful to this town, after consulting the private individuals, resolved to provide the following in the matter of the petition:

1st. That, saving the superior determination of the gov-
260 ernment to which this shall be given, his proposals and petition are admitted, and when he presents himself, the land he asks for shall be assigned to him in these terms: The head (toma) of the Bracito shall be the central point of the square of said "hacienda;" that is to say, two and a half leagues in a straight line up the river, and two and a half leagues down the river, the same being observed in the sides that form the square.

2nd. That for the reason that this jurisdiction, whose territory extends as far as San Diego only, has its woodlands up the river (rio arriba) and in this direction grazes its stock, Don Juan Gid and his families shall only have the "hacienda," the property of the lands for farming, manufactures and machines, etc., but not in the natural pastures and woods, which shall be common to these inhabitants and its jurisdiction, as they shall be to the new settlers.

3rd. That this minute, and the petition of Don Juan be made known to the public in order that if it should happen that any Mexican citizen of the jurisdiction offers the same propositions for the benefit of the public, promising to comply with the respective articles of the said decree, he may be admitted in preference to every foreigner, for which purpose the term of three days is given, which time will also serve for the people to show if it is their desire to have these neighbors, who offer to them instruction in the trades and industry, by settling in El Bracito, which is about sixteen or eighteen leagues distant from this jurisdiction, and at a place on the frontier, close to the regular habitations of the Apaches.

4th. That Don Juan Gid having the ownership (propiedad) of the lands of the "hacienda," all arrangements shall be made with him by any of the inhabitants of this jurisdiction who may desire to locate at El Bracito for the settlement of that place.

5th. The proposals made by the new settler for the benefit of the town are admitted, hoping that he may execute them, as well as comply with the articles of the colonization decree which have reference to him, this ayuntamiento reminds him that the families which he shall bring must be honest and belong to the
261 Roman Catholic Apostolic religion, the only one of the whole Empire, by whose laws all who settle in it must abide.

6th. That for the designation of the boundaries of the "hacienda" and the possession of the same, some of the alcaldes, one alderman, and one public attorney will go, who together with Don Juan Gid will examine the lands suitable for settlement in the territory of the "hacienda," as well as for agriculture, machines and manufactures, which (land) must be distinguished from that of summer pastures

(agostaderos) and for stock-raising. And it is to be hoped that the new settlers so far as they may be able, will surround themselves with plantations of trees, and that the police order be kept so as to facilitate the spiritual and temporal instructions and administration, this to be in the manner to be provided by the secular and ordinary ecclesiastical authorities, for which purpose this shall be given together with this minute, and an authenticated copy of it shall also be made for the protection and information of the party in interest; this original to remain in the archive together with the petition of Don Juan, as a perpetual testimony. Thus it was resolved by the aldermen, who together with the two alcaldes signed it before me, the secretary of the corporation, to which I certify.

JOSÉ YGNACIO RASCON.
JOSÉ MORALES.
JOSÉ MARIA BELARDE.
JOSÉ FRANCISCO CARBAJAL.
JUAN MARIA BARELA.
JOSÉ MANUEL GARCÍA.
JOSÉ MARIA GARCÍA.
JUAN GIL.
LORENZO PROVENCIO.
JOSÉ ALBARES.
JUAN MARIA PONCE DE LEON, *Secretary.*

262 It is a copy of the original to be found in the book of entries of the minutes of this illustrious corporation, which remains in the archive under my charge, to which I certify.

JUAN MARIA PONCE DE LEON, *Secretary.* [RUBRIC.]

Letter Transmitting Petition and Proceedings to Governor.

Mr. GOVERNOR: In consequence of the resolution, made by this corporation on the 3rd of April of this year, upon the petition of Don Juan Gid, an Anglo-American, I forward to Your Excellency a copy of the minute and application, together with the subsequent proceedings up to the full execution of article 4 of the decree of January 3rd of this year relating to colonization, but as the full execution of this law is new in these countries, it has occasioned in two particulars the protest made by Don Agapito Albo, deputy of the province and a lawyer in this town, which I also enclose for the superior information of Your Excellency.

Immediately thereafter, under date of April 17th there were presented to this corporation two petitions of residents of this town praying that to them also and by reason of preference there be granted to each one at least an hacienda up to the river and of this ali of the Bracito. The imitative circumstances of the new settlers and the fact that this corporation has no municipal ordinances regulating the distribution of land that may be useful and beneficial

in promoting settlement, agriculture, arts, etc., place this corporation under the necessity of making known to Your Superiority the resolution, that Your Excellency may be pleased to dictate whatever may be your pleasure in the matter, whether it be by yourself or after consulting the most excellent provincial deputation.

Session of today, 24th of April, 1823.—This place having granted it by the most excellent provincial deputation that territory extends up the river as far as San Diego, distant 40 leagues, resolved
263 as a benefit to this public bring before the government the following articles for its approval, if it should find it convenient.

1st. That, inasmuch as up the river there are only the woods, these and the pastures shall always be common both to the families of the colonists that have been admitted in aggregation and to those of this jurisdiction.

2nd. That the farming lands on both sides of the river be not wasted by giving the property therein to stock-raisers, and that those who apply for them be obligated in the terms of the law to cultivate them, to which end it is proper to caution the public that, in asking and granting these lands, order and proportion be observed, for which a superior regulation is especially desired.

3rd. That an effort be made to keep the 30 families of colonists in the center that all those of this jurisdiction may have the advantage of the model of their industries, arts and instruction which they promise, and in addition to this, and that the intake of water and acequias they shall construct above be used by all those below them who desire to imitate their industries and farms, it being understood that this corporation considers as sufficient without admitting others, the master artisans who are to settle at Bracito, to encourage the imitation of the industry and arts if all the old residents of the jurisdiction who desire and can cultivate the farming lands there are on both sides from here to San Diego and by which there will be obtained the happiness of all, and besides this a great restraint of the Apaches in their transit from this settlement to the interior of the province.

4th. That at 4 or 5 leagues distance in circumference of this town property in lands be given to nobody to the extent offered by the decree of colonization, the timber and pasture up the river being always reserved, and in the matter of water there should always be municipal regulations for its distribution and good order, and it will be convenient for these old inhabitants of the jurisdiction to acquire property in the farming between here and San Diego,
264 leaving as we have said, in the middle those who are to be the instructors in our agriculture and industry.

5th. In order to avoid jealousies among private individuals and interests of some breeders of stock who generally are prejudicial to these in the development of agriculture, and arts, it is observed that this jurisdiction is just beginning, and at the same time gets poorer and poorer if it is not given or provided with industries and arts, and in order to have them in its territory a means therefor is that adopted by virtue of artiele 4, inasmuch as to reject it, diffi-

culties would hereafter arise both because of the scarcity in the national exchequer and the poverty of these residents, for whom this ayuntamiento, to which it very closely belongs to look out for their happiness, has without delay, put in operation the franchise of the law; this corporation stating, nevertheless, that if it has erred in anything, the concession has been made subject to the superior determination. Besides this, it had in mind the fact that the new settler came with a recommendation in his passport from the assembly of the United States, the Government of which was the first that recognized our glorious independence and has admitted in its court the ambassadors of the Empire, recognizing them with every formality.

This ayuntamiento has found it convenient and worthy of public confidence to bring all of the foregoing before Your Excellency and the most excellent provincial deputation, that you may, in view thereof, order what may be just and convenient to remove uncertainties and to proceed with certainty in every matter, which is what is desired.

God preserve Your Excellency many years.

Paso.

JOSÉ YGNO. RASCON.

JUAN MARIA PONCE DE LEON, *Secretary.*

265 DEFENDANTS' EXHIBIT No. 10.

Surveyor General's Report in Reported No. 6.

HUGH STEPHENSON *et al.* } Grant.
vs.
THE UNITED STATES. }

The above case was set for trial on the 1st day of December, 1856.

In the year 1805 Juan Antonio Garcia petitioned Joaquin Real de Alencaster, the governor of the province of New Mexico, for a grant of land in what is now the county of Donna Ana to extend from the Bracito, on the Rio Grande, to the marsh or lake of Trujillo, promising to build a house, erect enclosures, and cultivate the soil, maintaining fifteen men there at his own expense for the purpose of protection until travel and the benefits to be derived from working the mine in the adjoining mountains should attract a sufficient number of persons to form a permanent settlement.

On the 4th day of August, 1805, Joaquin Real de Alencaster, the governor of the province, to whom the petition was addressed, decreed that the grant would be made whenever settlement should be established in the vicinity of the land petitioned for. On the 29th of November, 1816, Juan Antonio Garcia again petitioned Bernardo Bonavia, the commandant general of the State of Durango, for a grant of the land of which he had been in possession since the year 1805 and containing the same boundaries set forth in the petition made by him in that year, stating that there were several individ

uals of El Paso who had volunteered to accompany him in the formation of a settlement, and also promising to plant certain lands for the Apache Indians and furnish them with provisions from the crops he might raise at the above-mentioned place for the purpose of keeping them at peace.

On the 14th of April, 1817, the commandant general referred this petition to the lieutenant governor of El Paso, requiring him to report thereon. On the 29th of June, 1819, Jose Ordas, the lieutenant governor of El Paso, reported in favor of the petition.

266 On the 17th of July, 1817, the commandant general of Durango returned the petition to the lieutenant governor of El Paso, requiring him to enclose the list of persons who were desirous of accompanying Juan Antonio Garcia in the formation of the settlement referred to in his petition and to state the extent of land petitioned for, its distance from the nearest settlement, its resources, &c., and if the settlement and residence of the judicial and ecclesiastical officers could be formed in the centre of the land petitioned for. On the 30th of August the lieutenant governor of El Paso reported that the land contained in length about three leagues and in width from one-fourth to over one league. There was an abundance of water and pastures, and offered every facility for cultivation; that there was difficulty in establishing the settlement and residence of the officers in the centre of the land asked for, and that it was about fifteen leagues distant from the last houses of the town of El Paso, and enclosing the list of those persons who had volunteered to accompany Garcia in the formation of the settlement.

On the 12th of September, 1817, Juan A. Garcia addressed a petition to the lieutenant governor of El Paso, stating that as the circumstances which existed at the time he applied for a grant to the land in question had changed he prayed that no further action should be taken in the premises until requested by him.

On the 18th of February, 1820, the said Garcia again petitioned the governor of New Mexico, stating that those who had volunteered to accompany him in the formation of the settlement had given up the idea of going on account of the many restrictions placed upon the grant, and that as he had been occupying the land for eleven years he hoped that this circumstance would be no reason why the grant should not be made to him alone, and still promising to maintain a small number of armed men at his own expense and build houses, erect enclosures, and cultivate the land which was not occupied by the Indians, concluding his petition by praying that the grant be made to him if convenient to the service of the King.

267 On the 18th of August, 1820, Facundo Melgares, the governor of New Mexico, declined making the grant on a supposed want of authority in the premises and referred the petitioner to the proper authorities in the case.

On the 28th of July, 1821, the said Garcia again petitioned the commandant general of Durango for a grant of the Bracito tract,

recapitulating all the steps he had taken in the premises and the action of the authorities from 1805 up to that date.

Immediately following this petition is to be found a statement, made by a comptroller of the State of Durango, recommending that the grant be made and that the testimony of witnesses be taken in order to ascertain whether the land petitioned for was severed or not from the public domain, and, in case it was not, that an attorney general be appointed to superintend the interests of the public revenue, and that a report be subsequently made in order to ascertain the resources of the land and its adaptation to the raising of stock and cultivation.

On the 17th of January, 1822, the above proceedings were transmitted to the first justice of the town of El Paso, with instructions to comply with the request contained in the statements of the comptroller.

On the 18th of April, 1822, the justice of El Paso proceeded to take the testimony of witnesses as to whether the land was public domain or not, and it was proven by said testimony that the land in question had not been severed from the public domain, but was public land. The above proceedings were then transmitted by George Guerena, the justice aforesaid, to Don José Maria Cordova, of the vicinity of El Paso, who, on the 19th of April of the same year, reported the extent, locality, resources, &c., of the land petitioned for. In order to comply with all the requirements contained in the statement of the comptroller, George Guerena, the justice aforesaid, appointed Julian Bernal as attorney to superintend
268 the interests of the public revenue and transmitting all the proceedings to him, requiring him to report on such matters as appertained to his duties as such attorney. The report of the attorney aforesaid does not appear in full in the documents filed in this office, having been torn off at some period unknown to the claimants.

A certificate given by the second justice of the cantonment Bravos follows the above, certifying that they are true copies of all the papers which could be found in the archives of El Paso relative to the Bracito grant of land and which remained after the destruction of the archives by the United States troops in the year 1846.

On the 30th day of March, 1829, Francisco Garcia y San Juan, son of Juan Antonio Garcia, who departed this life in the year 1828, addressed a petition to the prefect or justice of the opposite side of the River Bravo requesting him, after reviewing the testimony presented to him, showing the occupancy of his father from the commencement of the present century up to the time of his death, in the year 1828, and that a grant was made to him according to law, that he declared him a legitimate owner of the Bracito tract of land.

On the 13th of February, 1849, Francisco Garcia y San Juan petitioned the justice of El Paso to cause certain individuals therein named to appear before him to answer the interrogatories contained in the petition as to whether the witnesses were acquainted with his deceased father and if he resided at the Bracito from the commencement of the present century up to the time of his death; if they

knew that at his own expense he cultivated the lands of El Bracito during his lifetime, and if he was lawfully placed in possession of the land by the competent authorities of the country, and that if he (the son) abandoned the land on account of indolence or on account of the invasions of the Indians.

The answer- to these interrogatories show that Juan Antonio Garcia occupied the Bracito lands during the time mentioned; that he cultivated the same at his own expense; that he was lawfully placed in possession by the competent authorities of the land;
269 that some of the witnesses had the original documents granting the possession in their own hands, and that Francisco Garcia y San Juan abandoned the land on account of the constant attack of the Indians and the hourly exposure of his life.

On the 17th of March, 1849, Juan Maria Ponce de Leon, political chief of the cantonment Bravos, at the request of Francisco Garcia y San Juan, certified that Juan Antonio Garcia, deceased, petitioned for a grant of land at the Bracito; that he resided there for many years, cultivating the soil and raising stock; that, almost at his own expense, he kept the neighboring Indians at peace, and rendered many important services to travellers, and even to the entire nation, until the hostilities and incursions of the Indians drove him away; that, at a subsequent period, a grant of land was made to one John Gid, in the vicinity of El Bracito, and that the limits of Garcia's lands were always excepted from being granted to others, and that he knew all of the above facts, having been appointed a commissioner by the Mexican government to examine the land petitioned for.

Further interrogatories were taken in the year 1849, showing that a grant was actually made to Juan Antonio Garcia by Jose Ordas, who was at the time lieutenant governor of El Paso, and testifying as to the boundaries of the grant.

It is also proven, at the request of Francisco Garcia y San Juan, that the United States troops, during the war with Mexico, in the year 1846, when they took possession of the town, destroyed a large portion of the public archives of El Paso, where the originals of all grants were required to be deposited, thereby preventing the claimants from procuring all the documents necessary to the establishment of their claim.

On the 15th day of September, 1851, the remaining heirs of Juan Antonio Garcia executed powers of attorney to Francisco Garcia y San Juan, authorizing him, in their name, to establish before the Government of the United States any claim they may have
270 had in the said Bracito tract of land, with full power of substitution or revocation; and by virtue of said powers of attorney, on the 16th of September, 1851, the said Francisco Garcia y San Juan substituted Hugh Stephenson, of the county of Donna Ana, in this Territory, to prosecute said claim before the authorities of the United States, vesting in said Stephenson all the rights and privileges he himself had derived from the heirs of the said Juan A. Garcia.

In the same year, 1851, those purporting to be heirs of Juan Antonio Garcia sold the undivided two-thirds of said tract of land to Hugh Stephenson, the present claimant, with the condition that

they would obtain and perpetuate the testimony of the possession of the land by the authorities of the Spanish and Mexican governments to their ancestor, the said Juan Antonio Garcia.

At the May term of the United States district court a petition was filed in chancery by the supposed heirs of Juan Antonio Garcia against Hugh Stephenson for the compliance with the terms of the sale to him made. During the progress of said suit witnesses were examined by order of the court, who proved that said Juan A. Garcia was lawfully seized of the land in dispute, whereupon a survey of the land was ordered to be made by said court and a decree entered "that the defendant pay or cause to be paid the sum of one thousand dollars or its equivalent to the said complainants as the purchase-money of a two-third- interest in the tract of land in said bill mentioned, known as the Bracito tract of land, beginning at a point on the Rio Grande known as the mouth of the Bracito acequia and running south along the said river a distance of three leagues to a lake known as the Trujillo lake, and thence extending back towards the east from said river to a range of sand hills, varying in distance from two to four and a half miles; thence in a northerly direction along said sand hills, varying from two to four and a half miles from the river to a point due east from the place of beginning, and thence to the place of beginning.

It is further ordered, judged, and decreed that upon the payment of the said purchase-money as in said bill specified the said
271 Stephen Archer be directed to survey and divide said tract of land between said complainants and the said Hugh Stephenson, according to the agreement in said bill stated and in said answer confessed to, giving to the said complainants one-third of the said tract of land and the said Hugh Stephenson two-thirds, and report said survey and division to the next term of this court. It is further ordered, adjudged, and decreed that said complainants deed to said defendant, after said survey and division, two-thirds of said tract of land in said bill mentioned, and that said Hugh Stephenson deed to said complainants his right, title, and claim to one-third of said tract of land in said bill mentioned, &c.

The deeds ordered by the court were duly executed, and are filed with the documents presented by the claimants; the survey was also executed, and the plat made by Stephenson Archer is also filed in support of the claim.

The papers acted upon by this office, with the exception of the deeds and plat ordered by the court, are copies of the proceedings had in the United States district court and duly certified by the clerk thereof.

It is not necessary for this office to examine into the validity of the testimony taken by the claimants in support of their claim or whether it is taken in accordance with the requirements of the usage in taking testimony in a foreign country to be used within the United States, there being no instructions to this office other than to receive the testimony presented by claimants, and the question is therefore submitted for the deliberation of Congress.

From the facts set forth in the testimony presented it appears that

Juan Antonio Garcia was in possession of the Bracito tract of land in the year 1805, and that he and those purporting to be his heirs and their assigns have continued in possession of the same up to the present day.

The testimony also shows that a grant was made to Juan Antonio Garcia in the year 1822 or 1823 by Jose Ordas, the lieutenant
272 governor of El Paso; that owing to the destruction of the public archives where such documents were ordered to be kept at that place, in the year 1846, by the American troops, it was impossible for the grant itself or a copy thereof to be presented by the claimants, although diligent search was made for it without success.

The claimants have not presented any testimony to prove that the present claimants are the legal heirs and assignees of Juan Antonio Garcia, deceased. It is the opinion of this office that the case is one covered by the treaty of Guadalupe Hidalgo of 1848 and sustained by the decision of the Supreme Court of the United States in the premises, and that therefore the grant made to Juan Antonio Garcia by the authorities of the Mexican government in the year 1822 or 1823 is a good and valid grant; and as no claim of title is presented to show that the present claimants are the legal heirs and assigns of said Juan Antonio Garcia, it is the opinion of this office that the grant should be confirmed to Juan Antonio Garcia alone.

The case is therefore transmitted to the proper department at Washington for the action of Congress in the premises.

WM. PELLHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, December 31, 1856.

273 DEFENDANTS' EXHIBIT DONA ANA BEND COLONY GRANT, REPORTED NO. 85.

TERRITORY OF NEW MEXICO, }
County of Donna Ana. }

To the surveyor general of the Territory of New Mexico:

Your petitioners, the inhabitants of "Doña Ana bend," (El Ancon de Doña Ana,) in the county of Donna Ana and Territory aforesaid, would respectfully represent that, in the year 1839, José Ma. Costales, for himself and others, (more than one hundred in number,) in conformity to the laws and regulations of the government of Mexico, petitioned the prefect of El Paso, and through him to the governor of the State of Chihuahua, for a grant of lands on
274 the east bank of the Rio Grande del Norte, forty or fifty miles above the town of El Paso, at a place known as the "Doña Ana bend."

And your petitioners further state that said grant of land was made to said petitioners and others, and that the same was immediately settled and occupied by them, and that they and their

grantees have, ever since the year 1840, been in the quiet and peaceable possession of the same.

And your petitioners further state that there are now more than three thousand persons residing upon and occupying said lands embraced within the limits of said grant, but your petitioners are unable to state the number of acres contained within said boundaries, as no survey has been made; but the place known as the "bend of Doña Ana" is well known, and the limits and boundaries, as stated in the testimony of Guadalupe Miranda, (herewith filed,) are believed to be correct.

Wherefore your petitioners, with a view that said grant may be confirmed, present for your consideration "a transcript of the expediente formed concerning the adjudication made of the lands of the place called Dona Ana," in the Spanish language, with a correct translation of the same; also the testimony of Yrineo Costales, Francisco Rodrigues, and Guadalupe Miranda; also a rough diagram of the land granted, showing its approximate locality to the government surveys.

All of which is respectfully submitted.

JNO. D. BAIL,
Attorney for the Inhabitants of "Doña Ana Bend."

References to Sketch.

A, B, C, D.—Commons or pasture lands belonging to "Doña Ana Bend grant." The lands between the Rio Grande and the line A, D, are agricultural.

A.—Head of Dona Ana acequia.

D.—Head of Brazito acequia.

H, S, N, M.—Pasture lands belonging to civil colony of Mesilla.

The lands lying between the Rio Grande and the lines Y, X, H, are farming lands belonging to Mesilla grant or civil colony.

The point Y is the initial point named in the Mesilla grant.

The Rio Grande made a change in 1865, and the dotted line on the sketch would mark probably the course now.

The diagram is made on a scale of two miles to the inch.

(Here follows diagram marked p. 275.)

276 *Translation of Muniments.*

(Seal of the State of Chihuahua.)

Secretary's office.

Transcript of the Expediente Formed Concerning the Adjudication Made of the Lands of the Place Called Doña Ana.

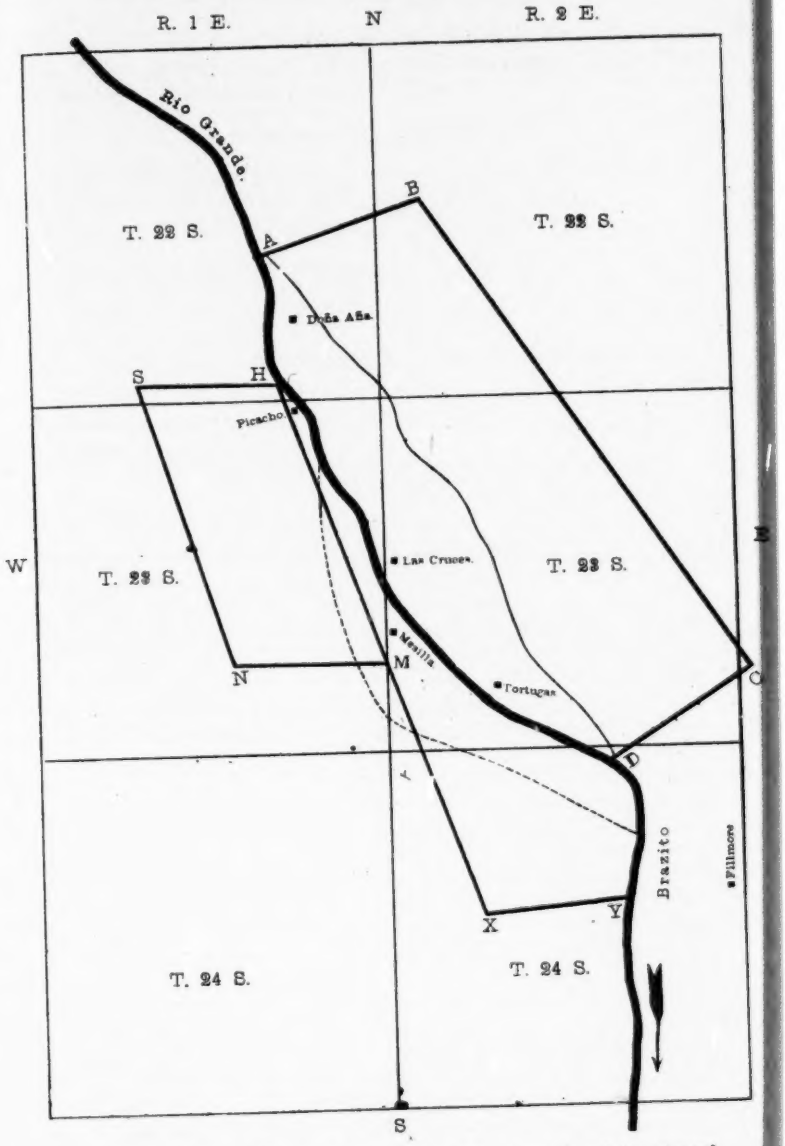
CHIHUAHUA, *March* 28, 1871.

This transcript of expediente, received through the mail express from John D. Bail, of Mesilla, agent of the claimants, and filed in this the office of United States surveyor general for New Mexico, this January 23, 1874.

MILLER, *Chief Clerk.*

[SKETCH MAP.]

Sketch South of Base-line, and East of Meridian of New Mexico.



The Sketch Shows the River as it ran up to 1865. Since then it has changed

No. 78
Cession at } p. 275

Number 60, year of 1840–'42–'43–'44.

Papers in the Grant of Lands which Sundry Citizens of the Town of El Paso Solicit to Settle at the Place Called Dona Ana, in the District of El Paso, Ten Leagues from said Town.

A seal, secretaryship, number 2.

List of the individuals who voluntarily present themselves to colonize the place of Dona Ana, and are the following:

Citizen José Ma. Costales (and 115 others named).

277 Total, 116.

Town of El Paso, 18th of September, 1839.

JOSÉ MA. COSTALES. [A RUBRIC.]

REVENUE OFFICE OF EL PASO [seal 3d, 2 reals].

Habitated for the two years of one thousand eight hundred and thirty-eight and eight hundred and thirty-nine.

Paso, August 21, 1839.

RONQUILLO. [A RUBRIC.]
PADILLA. [A RUBRIC].

Hon. prefect of this district:

The undersigned presents himself in legal form before Your Honor, and says that when the predecessor of your honor, Cayatano Justiniani, governed this district, I presented myself to him verbally, showing that in company with a considerable number of residents of this town we requested that there be granted us to settle the place of Dona Ana, situated up the river from this locality, and for this purpose we applied to the gentleman mentioned with the object that he would inform us what number of citizens were necessary to obtain the success of that application. He replied to me that with a hundred men it was sufficient to obtain the favor we ask, assuring me that as soon as they were completed I should make a list of their names, forwarding the latter through a formal petition, so that being placed in his hands he might give it the proper course

278 with the necessary report for the final action of the government. Relying upon so generous an offer, I have diligently completed the number of men that was suggested to me, with some increase, as is seen by the list that I duly accompany, asking him earnestly to give it the proper action so as to obtain the success of what we so much desire, for the concomitant benefits thereof cannot escape the observation of Your Honor, not only to those who solicit, but in general to all this vicinity. I omit for the present to state the conditions with which such an enterprise should be assured, for I properly understand that the privileges of new settlers are subsisting, confining myself only to asking of Your Honor that when you have the goodness to announce your report, the conditions of the increase may be ascertained. Therefore I humbly pray that Your Honor, in consideration of the benefits that must abound from the aforesaid re-

port, you consider as becomes the high duties devolving upon you. I declare the non-dissimulation and as is necessary, &c.

Town of El Paso, 18th of September, 1839.

JOSÉ MA. COSTALES. [A RUBRIC.]

MOST EXCELLENT SIR: The place Dona Ana, distant from this town ten leagues, a little more or less, possesses abundant and fertile lands to cultivate, and for other purposes it facilitates with small labor the taking of water to cultivate them by irrigation, and altogether has all the advantages that a new settler needs to obtain the object he desires. For these reasons and the many others of more weight that are within the observation of Your Excellency, I will not stop to show you that I find no obstacle sufficient for denying to the petitioners their application, which has for its object the increasing of the population, so necessary for the welfare of a country in all times and circumstances. This is what I can say to Your Excellency upon the subject, in order that in view thereof you may decide according to your superior pleasure.

Paso, October 18, 1839.

JOSÉ YGO. RONQUILLO. [A RUBRIC.]
PEDRO TRUJILLO. [A RUBRIC.]
Secretary pro Tempore.

Prefecture of the district of El Paso, No. 177:

I have the honor to direct to Your Excellency, with the report that I have believed just, the accompanying petition of the citizens of this place, José Ma. Corrales, that you be pleased to report thereon to the honorable the governor, so that he may determine as he sees proper.

God and liberty, Paso, October 18, 1839.

JOSÉ YGO. RONQUILLO. [A RUBRIC.]
PEDRO TRUJILLO. [A RUBRIC.]
Sec. pro Tem.

CHIHUAHUA, *November* 9, 1839.

To the most excellent departmental assembly:

J. MARIA YRIGOYEN. [A RUBRIC.]

MOST EXCELLENT SIR: The petition of certain citizens of the town of El Paso, only asking that there be adjudicated to them the lands of the place called Dona Ana, distant ten leagues from the aforesaid town, is without doubt admissible. Inasmuch as it contemplates nothing less than the encouragement of industry, for as stated by the honorable prefect of El Paso, in his report, that place being settled by the applicants, they will cultivate the fertile lands
the place contains. This result, as well as that of increasing
279 the population, which is so important to all society, and on
the other hand to prevent idleness, to which many of the interested may give themselves up as they have not a single piece of land to obtain their subsistence from, prompts the board to rec-

ommend that, in conformity with the laws of colonization, there be granted to the applicants the quantity of land allowed them thereunder, investing them equally with all the concessions and privileges the laws concede to new settlers.

This is its opinion. Nevertheless, Your Excellency will resolve in this particular that which you deem proper and just.

Chihuahua, December 5, 1839.

PEDRO OLIVARES. [A RUBRIC.]
JUAN NEGRETE. [A RUBRIC.]

JULY 8, 1840.

In conformity with the advice of the excellent assembly, these papers will be passed to the chief of the geographical bureau, that he forthwith, and bearing in mind the laws on the subject, consider the conditions in which should be made the adjudication of the lands applied for.

[A RUBRIC.]

Bureau of the geographical board of Chihuahua.

MOST EXCELLENT SIR: I comply today with the order of Your Excellency, of date the 8th of July instant, requiring me to report the conditions upon which the grant of lands should be made to the one hundred and sixteen citizens that ask it at the place of Dona Ana; and upon doing so only my satisfaction is not complete for the just fear that attends me that my investigation has not produced the desired result that Your Excellency has promised yourself. The circumstances of the colonization proposed not being according to my understanding a true colonization, as the grant of land therein asked for is sought by inhabitants all of the department and even of the same district of El Paso; the fear that my belief might be erroneous in the matter; the difficulty which met me whether or not this regulation should be governed by the general laws of colonization of the Republic or the special ones of the State; the doubt whether some of these will be applicable, so as not to have an obvious conflict with the existing system of government; the circumstance that the authority dictating the regulation might not be a legislative one, and having to express therein without exceeding the powers of the government rules that regulate well the establishment of the settlement, avoiding at the same time some evils that might be apprehended, were reasons that delayed my action and deprived me of the pleasure of having sent to Your Excellency this report with the promptness that was perhaps desired. It will afford me the greatest satisfaction, if it is in conformity with the desires of Your Excellency; should it be the reverse, Your Excellency can correct it as well in the substance as in the form as you please in your superior pleasure.

Chihuahua, July 30, 1840.

JOSÉ RODRIGO GARCIA. [A RUBRIC.]

Geographical bureau of Chihuahua.

Regulation Preliminary to the Granting of Lands of Dona Ana Among Various Individuals of the District of El Paso Who Have Asked for Them.

Article 1. There is conceded to the one hundred and sixteen citizens, that through the honorable prefect of El Paso asked for
280 the grant of lands at the place Dona Ana, the necessary permission to proceed to settle the point referred to.

Art. 2. To each person of the petitioners who may proceed to establish himself there there will be granted, should he be the head of a family, the quantity of land included in a square whose side has seven hundred and eighty varas and a half in length; and if he should not be, that which is contained in a parallelogram of equal length and the half of the before-mentioned quantity in breadth. It will be understood that this land is granted that it may contain his irrigable land.

Art 3. Wherever it may seem most proper in the judgment of the honorable prefect of the district to establish the town there will be measured an area equal to the eighth part of a "sitio de ganado mayor," or twenty-five hundred varas of length and twelve hundred and fifty width, which shall be set aside for the commons of the town. At the selection by the prefect of the spot spoken of he will be governed as far as possible by the provisions of chapter 5 of the reglamentory law, No. 32, date of 18th of November, '33, enacted by the congress of the State.

Art. 4. For the better regularity of the town, the honorable prefect will take care to divide it off in squares of one hundred varas in length and fifty in breadth, with streets between of twelve and a half varas of width.

Art. 5. Each one of the present petitioners will be favored with the half of a square, or a surface of fifty varas on a side, that he may locate his residence thereon—taking care that these possessions are adjoining one to the other for the better security of the place. In the most central part of the latter there will be taken four squares; two that are adjoining lengthwise will form the plaza, and the other two will be appropriated for the town-house, church, and minister's residence, when there shall be any.

Art. 6. The petitioners should remove to that place as quickly as possible, under the direction of the honorable prefect of the district, who will make them the distribution of the lands according to the provisions of this regulation and the existing laws.

Art. 7. None of these can withdraw from the place before two years, without the previous permission of the government, and those that do so shall forfeit the lands that may have been given them.

Art. 8. The settlement will remain for the present subject to the honorable prefect of the district of El Paso, to be considered as belonging to the district of the same name.

Art. 9. The lots being assigned and the families established upon them, the municipal government of the town will be regulated in conformity with the provisions of the reglamentory law of 20th of

March, 1837, and in accordance also with the regulation issued by the excellent departmental assembly, and ordered to be observed by this superior government on the 2d of November, 1839.

Art. 10. The maximum term of time conceded to the settlers to remove to the point they solicit will be three months, counting from the day in which is received this ordinance by the respective prefectures. The individual who shall not within that time repair to receive the lands corresponding to him, should make appear before that authority the legal impediment that might have detained him; or, if the contrary, he will lose the right that by the foregoing articles was conceded him.

Art. 11. Immediately after the half and one more of the colonists have assembled at Dona Ana, the honorable prefect will proceed to establish for them their municipal government agreeably to
281 the provisions of article 9 of this regulation, naming a proprietary judge and an alternate; which this government authorizes him to do in virtue of the power granted it in article 7 of the order of November 2, aforesaid.

Art. 12. All national citizens who in the term of one year, counting from the day spoken of in article 10, present themselves asking lands in the place referred to, will be granted the same as the new settlers, except the land designated to the latter for residences in the center of the settlement. To no alien will entrance in the latter be permitted without he has shown to the political authority the proper passport.

Art. 13. The petitioners of which the previous article speaks should address themselves to this government, through their respective prefects, who, in supplying the necessary information, will do it with the knowledge he has of the industry and integrity of the claimant.

Art. 14. As the persons referred to in the two preceding articles, upon establishing themselves in the new colony, enter upon the enjoyment of conveniences proportionate to the work of their predecessors, to the end that like them they may contribute to the prosperity of the settlement, they will pay five per cent. calculated upon the just value of the land granted them. This tax will be exacted but once, and will be applied to the fund of ways and means.

Art. 15. There will also be applied to the creating of the fund of ways and means, the price of the lots situated in the commons of the settlement, which may be sold at the valuation designated for them.

Art. 16. In the grants that may be made to the new applicants, care shall be taken that they be situated in places immediately following those already granted.

Art. 17. As well these as the first settlers may acquire title by purchase up to three suertes equal to the amount granted of land to be cultivated and an entire square of those established for residence.

Art. 18. The price of the suertes and lots mentioned will be for the present one-half of their present value in the town of El Paso.

Art. 19. The particular obligations of the new settlers are—

1st. To begin to prepare their land within the term of six months at most.

2d. To contribute with their assessments established by the laws to the fund of ways and other funds therein designated.

3d. To present themselves armed upon the calls of the political or military authority, alternating half about all the persons capable of bearing arms, in the ordinary cases that may arise. When imminent danger calls for a greater number of men, they shall all come forward that have been called for by the authority.

4th. To contribute with their personal services in the construction of a dam or acequia and to the repair or reconstruction whenever the civil authority shall deem it necessary. Their successors shall each bear the same obligations.

Art. 20. The honorable prefect of the district will concede to the new settlers the water necessary for their fields, reporting to this government concerning the manner in which he may believe the distribution thereof should be made, and the manner in which irrigation should be regulated.

Art. 21. The individual who for two consecutive years shall be proved before the prefect of the district to be the hardest worker or most industrious of the place shall be rewarded with half a suerte of land of those assigned to the heads of families. This reward remains standing only for the term of the first four years.

Art. 22. The ordinary municipal fees that the new settlers
282 will pay will be the same as are now customary at the capital of the district to which the settlement remains subject.

Art. 23. The government will endeavor in conjunction with the illustrious bishop to see that they be supplied with a parish priest to administer to their necessary wants.

Art. 24. They will not pay tithes for the products they raise from the new fields according to the provisions on this subject of the law, but what may be established by agreement with the said minister.

Art. 25. The obligations, rights, and concessions of which the present regulation treats will be considered to be established without prejudice to what may have been determined in the premises in the regulation of colonization issued on the 24th of September, 1827, by the congress of the State and the other existing provisions.

Chihuahua, July 30, 1840.

JOSÉ RODRIGO GARCIA. [A RUBRIC.]

Geographical bureau of the department.

By virtue of your official communication, dated upon the 8th instant, and in consequence of the concurrence of his excellency the governor placed at the end of the document with which you by order of His Excellency are pleased to accompany the former, I have informed myself concerning the petition which one hundred and sixteen citizens of the district of El Paso have addressed to the

superior government relative to the granting of lands at the place called Dona Ana. I comply today with the superior decree referred to, and have the satisfaction to transmit to you the report. I have deemed proper that you be pleased to place it in the hands of his excellency the governor, assuring him of my respects, and receiving yourself my considerations and esteem.

God and liberty, Chihuahua, July 30, 1840.

JOSÉ RODRIGO GARCIA. [A RUBRIC.]

Honorable secretary of state of the department.

JULY 31.

The regulation which the director of the geographical bureau presented is provisionally approved, and in pursuance thereof the necessary orders will be given to the prefect of El Paso whereby, in view of its provisions and the bases that the honorable board recommends in its report of the 5th of December, he may proceed to the adjudication of the lands in the form prescribed, and to establish the settlement, governing himself by the rules specified, with instruction to give an account to the government as soon as what is provided for is executed. For this purpose there will be furnished him in an official copy the proper portion of the documents. Let there be placed notices in the interior assembling settlers, and the supreme government will be informed of the result.

[A RUBRIC.]

EXCELLENT SIR: In consequence of the petition of more than a hundred residents of the town of El Paso del Norte, I have ordered, in conformity with the excellent departmental government office, and bearing in mind the laws on the subject, that there be awarded to them the lands included in the place called Dona Ana, situated from ten to twelve leagues from the said town, upon the road to New Mexico, in a bend that the Rio del Norte forms, with a most beautiful plain, which, with a very little work, can be
283 irrigated from the same river upon the margin of which it lies, forming a valley surrounded by the Sacramento, Soledad, and San Andres mountains upon the other side of the river, and upon this by the Gila, Mimbres, and Magollon mountains, which lands, according to intelligent persons, are very suitable for cultivation. I have been prompted by the claims which the people of El Paso have merited by the constant campaigns they make upon the Indians, to form a new settlement that will remove them farther off, and especially as the settlers are all Mexicans. Your Excellency will be pleased to report this disposition to his excellency the president for his information, and for other purposes proper, tendering at the same time assurances of my greatest consideration.

God and liberty, July 3, 1840.

[A RUBRIC.]

Excellent secretary of the interior.

The excellent departmental junta to whose judgment was submitted for determination the document formed upon the petition of sundry citizens of that town, to the end that they be granted the place Dona Ana, has made the following report:

"MOST EXCELLENT SIR: The petition of some citizens of the town of El Paso praying that there be adjudged them the lands of the place called Dona Ana, distant ten leagues from said town, is without doubt admissible, for it looks to nothing less than the encouragement of industry. For, as stated by his honor the prefect of El Paso in his report, that place being once settled by the petitioners, the rich tillable lands it embraces will be cultivated. This result, as well as the increase of the population, so important to all society, and on the other hand, the prevention of idleness, to which many of those interested might give themselves up in consequence of not having a single span of land to maintain themselves, induces the junta to decide that in conformity with the colonization laws the favor be granted to those interested, by the adjudication of the portion of land they are entitled to thereunder, investing them also with all the concessions and privileges the laws confer upon new settlers. This is their opinion, nevertheless your excellency will resolve as you may consider convenient and just in the premises."

In view of the foregoing report his excellency the governor appended the following decree:

"JULY 8, 1840.

"In conformity with the advice of the excellent junta, this document will pass to the director of the geographical bureau, that at once and in view of the laws upon the subject he determine the conditions on which the adjudication of the lands applied for can be made."

Whereupon the director referred to reported as follows:

"I this day comply with the decree of Your Excellency dated 8th of the present July, relative to my reporting my conditions on which should be made the grant of lands to the hundred and sixteen citizens who ask it at the place Dona Ana, and upon doing so, my satisfaction is not complete only from the just apprehension I experience that my efforts may not produce the result that Your Excellency might have promised yourself. The circumstance that the colonization spoken of is not according to my understanding a true colonization, inasmuch as the grant to lands solicited for it is asked by the inhabitants of the department, and even of the very district of El Paso; the apprehension that my belief may be erroneous
284 in the matter; the difficulty that presented itself to me whether or not this ordinance should conform to the general laws of colonization of the Republic or the special ones of the State; the doubt as to whether some of the latter not having a manifest conflict with the present system of the government might be in force; the circumstance that the decreeing power might not have had legislative authority, and the having to prescribe thereupon without exceeding the faculties of the government regulations that might provide well for the establishment of the settlement, prevent-

ing at the same time some evils that might be apprehended, were motives that delayed my consideration, and deprived me of the pleasure of having forwarded to Your Excellency this report as soon as you perhaps desired. It will afford me the greatest pleasure should it conform to the desires of Your Excellency. Should the reverse be the case, Your Excellency can correct it as well in the matter as in the form, in manner according to your superior pleasure." (Here the regulation written upon page *et seq.*)

And the foregoing regulation depending upon the sanction of his excellency the governor, he has seen proper to approve the same provisionally, and in virtue whereof he directs me to say to you, as I do, that in pursuance of what the same provides, and of the bases prescribed by the excellent junta in its included report, you proceed to the adjudication of the lands applied for, and to establish the settlement according to the rules provided, reporting to this government what shall be done in virtue of this determination.

God and Chihuahua, July 31, 1840. [A RUBRIC.]

Hon. prefect of El Paso.

Hon. prefect of this district:

The undersigned, all residents of this town, appear before your honor with due respect, representing: That, upon the 18th of September last, we addressed to your perfecture a petition asking that we might be given and granted the land known by the name of the Bend of Dona Ana, situated upon the margin of this river, above, in the northern part, distant from this town about ten leagues, somewhat more or less, with the object of working its lands for the purpose of agriculture and pastures near by, for the raising and maintaining of domestic animals necessary and indispensable for this class of industry, leaving its groves of trees, useful for building and other purposes, for the common use, together with those of this town; and inasmuch as up to this date we do not know the disposition it has received, although we are aware that the same was remitted to the government of this department after a report that your prefecture deemed proper to append to it. Impelled by the scarcity of lands which we have experienced since the year 1828, from the freshets of said river carrying off and rendering useless more than half of the small quantity we previously cultivated, we find ourselves obliged, in order to subsist ourselves and our families, to apply anew to your honor, representing with all earnestness that you be pleased to make of this petition such disposition as you shall deem opportune, to the end that with the utmost dispatch what shall be deemed proper for the relief of our calamitous necessity may be determined for us; and in case that for the grant there arise any inability the government may at present have to afford the supplies that the law provides for new settlers. Harassed by the want that afflicts us, we consider the same as furnished, being content with only the grant that we ask, and that a general benefit may result from this new settlement to the nation, employing in this way the labor of its citizens and establishing measurably a bul-
285 wark against the barbarous tribes that surround us on this frontier, facilitating at the same time the most easy commu-

nication with the department of New Mexico, and a sure assistance to the travelers in our trade with that place, as the route leading there has to pass through the center of the settlement to be established. We believe that these facts are evident to the understanding of your honor to such a degree that they are not to be doubted. Therefore, we humbly pray that your honor be pleased to report hereon as you may deem well, with the laudable object of its early disposition, whereby we will receive grace and favor. We declare non-dissimulation, and as necessary, &c.

Town of El Paso, July 3, 1840.

286 MOST EXCELLENT GOVERNOR: In a report of the 18th of September last of this prefecture it has been stated to Your Excellency what is proper relative to the land that the petitioners propose to cultivate. These, from the force of the circumstances in which they now find themselves, by reason of not having lands to cultivate, with other reasons of no less importance, and that are evident to Your Excellency, cause me to abstain from particularizing very much in detail the miseries that afflict this settlement for the want of grain for its subsistence; and if a portion of the laborers of this town do not devote themselves to husbandry, it is clear that they will always continue in the most miserable condition, owing to the want of lands they lack. It being certain that if the freshet of the river in the approaching year is equal to the one just occurred, undoubtedly one-half of this jurisdiction would be lost, together with the town of Real and part of the other towns that the same river has isolated, a motive that obliges the said petitioners to look in time where to live. Notwithstanding the foregoing, Your Excellency in view thereof will determine according to your superior pleasure.

Town of El Paso, July 7, 1840.

JOSÉ MORALES. [A RUBRIC.]
RAMON DIAS DE LA SERNA, [A RUBRIC.]
Secretary.

Prefecture of El Paso, number 100.

I have the honor to communicate to you, with the report that I have believed just, the accompanying petition of sundry citizens of this town, in order that you be pleased to report the same to his excellency the governor, that he may determine as he shall deem well, again enjoining you very particularly upon my part the prompt dispatch of the matter on account of the need that these inhabitants have to carry on their enterprise if the superior government accedes to their request.

God and liberty. Town of El Paso, July 8, 1840.

JOSÉ MORALES. [A RUBRIC.]
RAMON DIAS DE LA SERNA, [A RUBRIC.]
Secretary.

Secretary of the superior government of the department of Chihuahua.

AUGUST 4.

That the present governor was aware since he entered upon the administration what an advantage would be to the welfare
287 of the people of El Paso the establishment and settlement of the place of Dona Ana, and that he had the pleasure to issue on the 31st ultimo the necessary orders to that end, with all the requisites the law prescribes.

[A RUBRIC.]

The present most excellent governor, Francisco Garcia Conde, was aware since his entering the government how proper and beneficial would be for the welfare of the people of El Paso the establishment and settlement of the place Dona Ana, that some individuals had solicited by petition on the 18th of September of the last year, which was found pending in this secretaryship, and therefore His Excellency was pleased to issue, upon the 31st ultimo, the necessary orders to your prefecture to proceed to the granting of said lands and establishment of the settlement with all the requisites required by the laws. All of which I communicate to your honor by his order, and in reply to your official note relative thereto of the 8th of the said month, with which you accompany a new petition on the subject from the citizens interested of this town.

God and liberty, Chihuahua, August 5, 1840.

His honor prefect of El Paso:

Under date of 18th of September, 1839, one hundred and sixteen citizens of the town of El Paso presented themselves to this superior government, through the proper channel, praying that there might be adjudged to them the cultivable lands situated upon the margins of the Rio Bravo (distant ten or twelve leagues north of El Paso) at the place commonly known by the name of Bend of Dona Ana. This government, in consideration of the laudable object these individuals propose, in view of the provisions now in force, as well general as special, that authorize this class of grants, knowing that with this act is protected and encouraged the useful branch of agriculture, one of the fountains most productive of wealth and public prosperity, and finally persuaded that by this means many arms, which in consequence of our unfortunate circumstances of poverty, being as they now are, idle, will become busy and productive, agreed to concede to them, with the concurrence of the most excellent departmental junta, the favor they asked. For this purpose this same government undertook to establish the bases on which the said adjudgment should be proceeded with, bearing in mind in doing so that the same ought to yield a result which would be the more satisfactory in proportion as the grant and the duties by it imposed on the former should be united with his individual interest; for which reason there was conceded to the petitioners for land to cultivate the exclusive title of a caballeria of land to the head of families and the half of that quantity to those that are not, adjudging to each the lot indispensable for a residence in the commons of the new settlement to be established. Also it was not forgotten to leave unap-

propriated the necessary space for the prosperity of the colony, and with this intention it was provided that all natives within the term of one year, counting from the date of the establishment of the colony, might present themselves to the government through the proper channel asking the same favor, it might be conceded them, with some slight modifications, the same being that these individuals entering in possession of the piece of land assigned them shall have to pay for once only 5 per cent. calculated upon its value, and also have to purchase at its full value the lot they may apply for in the settlement, with the object that the former of these products as well as the latter be turned over to the fund of ways and means of the colony; and as this arrangement should be within reach
288 of all the inhabitants of the department, his excellency the governor has directed that this notice be circulated for the purpose indicated, and with that of inviting such honest and industrious poor citizens as may desire to settle in the new colony, reminding them of that wise maxim "that if permanent felicity were compatible with human nature it should be sought in the fields," and that other none the less wise, and much more comprehensive, that serves as a motto of one of our modern enlightened periodicals, to wit, "Of all things that can be undertaken or sought in the world nothing is better, nothing more useful, nothing sweeter or more worthy the free man than agriculture." Which I have the honor to communicate to your honor by direction of his excellency the governor for the proper purposes.

God and liberty, August 13, 1840. [A RUBRIC.]

To the prefects.

Prefecture of Hidalgo, number 356.

By the circular of your honor of the 13th inst., I am advised that one hundred and sixteen residents of the town of El Paso presented themselves to your supreme government asking that there might be adjudged to them the cultivable lands situated on the margins of the Rio Bravo, at the point commonly known by the name of Bend of Dona Ana. They have been granted them in the manner the said circular mentions inviting such industrious men as may desire to settle in said colony to do so with the privileges conceded them, which I will communicate to the inferior authorities of the district, to the end that being published the same will come to the knowledge of the public.

God and liberty, Hidalgo, August 18, 1840.

JOSÉ MA DE ECHAVARRIA. [A RUBRIC.]
JOSÉ LEANDRO MUÑOS, [A RUBRIC.]
Secretary.

Secretary of the government of the department.

Prefecture of El Paso, number 138.

For the purposes contemplated by the superior circular of his excellency the governor, of the 13th instant, relative to inviting

such honest and industrious poor citizens as may desire to settle in the new colony of Dona Ana, I have circulated and ordered the same to be published in all this district under my charge, whereof I advise your honor for your information and for the superior knowledge of his excellency the governor.

God and liberty, town of El Paso, August 28, 1840.

JOSE MORALES. [A RUBRIC.]
RAMON DIAS DE LA SERNA. [A RUBRIC.]

Secretary of the superior government of the department of Chihuahua.

Prefecture of the district of Guadalupe y Calvo.

There is received in this office the circular dated the 13th instant, relative to the new settlement to be formed upon the margin of the Rio Bravo, ten leagues north of the town of Paso del Norte which will be published at this capital, and will be circulated in
289 the district under my charge for the same purposes. You will be pleased to advise his excellency the governor thereof, and to receive my assurances of esteem.

God and liberty, Guadalupe y Calvo, August 23, 1840.

JOSE S. PAREJA, *Secretary.* [A RUBRIC.]
MARIANO SAENZ, *Secretary.* [A RUBRIC.]

Secretary of State of Chihuahua.

Perfecture of El Paso, number 153.

I have the honor to address to your honor with the report I have thought right the accompanying petition of citizen Pascual de la O, and associates for the purpose that you be pleased to report the same to his excellency the governor, for such action as he may deem well.

God and liberty. Town of El Paso, October 19, 1840.

JOSE MORALES. [A RUBRIC.]
RAMON DIAS DE LA SERNA,
Secretary. [A RUBRIC.]

Secretary of the superior government of the department of Chihuahua.

MOST EXCELLENT SIR: The undersigned residents of this pueblo of Cenecú, corresponding to the capital El Paso, come before the

upright and hightoned equity of Your Excellency with due respect to ask the favor which, in consideration of the force of the reasons which justly favor us, we proceed to state; the rigor of the poverty which unhappily afflicts us, the excessive scarcity of all kinds of resources which have failed us, and the increase in our innocent families which in the course of time are increasing, and who are the ones who without fault suffer all these calamitous vicissitudes, that in fact we all undergo, constrain us imperiously to address our sad complaints to the only and beneficent source capable of relieving them. Your Excellency, then, with merciful hand, and for the sake of the noble sentiments of humanity characteristic of you, will please to provide the only remedy there is, and which we will demonstrate, to impede the rapid course borne on by the crisis of indigence which torments us. This remedy is none other than that you be pleased to give to us the right to cultivate, under title and in conformity with the laws, whether by especial grant or at our private expense, that portion of the fertile, abandoned, uncultivated lands found in this pueblo. Perhaps our just request may cause at first sight surprise, but when it is considered that the extent of the lands of the quality mentioned is quite large, so that the small number of natives that this pueblo has never can cultivate them, whether owing to their magnitude or whether owing to the notorious apathy or neglect of the natives; and furthermore when it is observed that our landed possessions are so entirely reduced that their yield is incapable of affording us even in a small degree the indispensable support of our said families, and owing to which we have to experience the serious wants referred to at the beginning; it will be seen as a just consequence that the supreme law of necessity impels us to avail ourselves, by legal means, of this the right of petition, for from its success results no less than a general and private benefit. Although in regard to this may be argued the covetousness, hate, and refined selfishness, qualities which in this class of pueblos have always prevailed among the natives toward their neighbors. It may also be said to us that we might enroll ourselves among the number of settlers of the new colony which is going to be established at the place Dona Ana, corresponding to the capital, the town of El Paso; but although we have abun-
290 dantly such desires, our poor patrimony, which does not consist of anything but the ownership of some very small pieces of land, as we have shown, and our humble hut that answers for a home, deprives us absolutely of that favor, or the facilities which the kind good will of Your Excellency has been pleased to offer us, at the same time being an obstacle to our going there the abandonment of the few effects we hold in our own right as residents of this pueblo, there not being anybody wishing to purchase them, and from the product of which we might outfit ourselves with the indispensable articles for becoming settlers of the new colonial establishment.

Therefore we humbly pray that Your Excellency be pleased to

heed our submissive prayer whereby we will receive particular favor, and for which we will always live in perpetual remembrance.

Cenecú, October 10, 1840, E. S.

PARCUAL DE LA O.
CANDELARIO GONZALES.
JUAN ANTO. GARCIA.
SATURNINO ALVILLAN.
MARCELO OROSCO.
CALIXTRO LEYVA.
ENCAMACION ROMERO.
JOSÉ MA. GONZALEZ.
PABLO ALVILLAR.
JUAN PABLO ARCE DE MADRID.
JOSE VICENTE LOPEZ.
CRISTOBAL OROSCO.
NICOLAS PACHECO.
GABRIEL CORDERO.
JOSÉ BLAS DURAN.
SIMON GUERRA.
JOSE BLAS RIVERA.
TEODORO BENAVIDEZ.
ANASTACIO CANDO.
TOMAS GRIEGO.
JOSÉ DE LOS ANGELES CURERO.
JOSÉ JAVELA.
JOSÉ VELARDE.
JOSÉ FELIZ LOPEZ.
GREGORIO MONTOYA.
ANTONIO JARAMILLO.
BAUTISTA GRIEGO.
SILVESTRE PASOS.
EUGENIO LOPEZ.
JOSÉ SOTO.
COSME RIOS.
VALENTIN MAESE.

MOST EXCELLENT SIR: Your Excellency being aware of the complaints which the natives of the pueblo of Senecú have repeatedly made, objecting that their lands be occupied by citizens settled in said pueblo, prevents my stating minutely the powerful reasons that hinder acceding to the prayer of the petitioners, who, although true they suffer hardships from the want of lands, can apply for them if they desire to employ themselves in the work of the new colonization of Dona Ana, where there are sufficient affording the conveniences that the industrious men should desire in human life—all these being reasons that prompted the goodness of Your Excellency to make the concession of lands general of the said colony to all the native citizens who may wish to permanently settle therein. Your Excellency notwithstanding the foregoing will determine according to your superior pleasure.

Town of El Paso, October 19, 1840.

JOSE MORALES. [A RUBRIC.]
RAMON DIAS DE LA SERNA, *Secretary*. [A RUBRIC.]

DECEMBER 15.

In conformity with what is reported by the prefecture this petition is not granted, and the same authority may assure the parties interested that the government will furnish them at the place Dona Ana all the advantages they may desire.

[A RUBRIC.]

291 His excellency, the governor, having examined the petition of some citizens of Senecú, requesting the lands of the

natives, and also the report of Your Honor, showing the just rights of the latter and the difficulties that would result from granting the petition of the former, has been pleased to decree in conformity with Your Honor's report instructing me that in communicating this, I charge you in the name of the government to assure the petitioners that His Excellency will furnish them at the place Dona Ana all the advantages they desire.

I reiterate, &c. God and liberty, December 15, 1840.

His honor the prefect of El Paso. [A RUBRIC.]

Number 179.

The day having arrived on which the settlers of the new colony of Doña Ana were to set out, a portion of them excused themselves on account of fear of the enemy; those that remained and are anxious to commence the enterprise are prevented by their poverty. The small number of men which is not sufficient to repel at that place any attack that might occur, comprehending which they earnestly request that the time may be extended to them until the 1st of the month of February of the coming year, to start for the said place, as well in order in that time to settle some affairs of urgent necessity as to see whether within the same time they enroll other individuals to increase their force; asking furthermore that those who have signed who without legal excuse absent themselves may be compelled to comply with their obligations, for they believe they have excused themselves so as not to assist in the work on the acequia; all of which I communicate to you to the end that you be pleased to inform the most excellent governor thereof, so that His Excellency be pleased if of his superior will to concede to the petitioners the extension they ask; and also whether I may compel those who have excused themselves to go upon the work of the acequia as is requested by those who up to date are steadfast in carrying out their obligation. I protest to you the most sincere considerations of my esteem.

God and liberty, Paso, November 18, 1840.

Secretary of the government of the department.

A copy.—Town of El Paso, June 9, 1842.

J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

The most excellent governor desires to know the reasons that have delayed the fulfillment of the order that was communicated to your prefecture on the 31st of July, 1840, for the granting of the lands of Dona Ana and the establishment of a new settlement at that point. His Excellency therefore expects the proper report which Your Honor will be pleased to make with the dispatch the importance of the subject suggests.

God and liberty, El Paso, June 8, 1842. [A RUBRIC.]

His honor prefect of El Paso.

Prefecture of the district of El Paso, No. 12.

This office having been occupied searching out and bringing to light any relative antecedents which may have relation to the pre-

liminaries which have hitherto embarrassed the establish-
292 ment of a new colony upon the lands of Dona Ana, treated of by the superior order of the most excellent governor dated July 31, 1840, to which your note of the 8th instant, about requesting the proper report, refers, only finds a communication dated 18th of November of said year, in which it is stated the greater part of the colonists excused themselves from carrying into effect their agreement from fear of the Apache enemy, and the balance requested that the time might be extended them until the ensuing February, as is shown in detail by the copy that I forward you, that you may be pleased to communicate the same to the most excellent governor in compliance with what is required of me in the premises by the said order.

God and liberty, town of El Paso, June 9, 1842.

JOAQUIN VELARDE. [A RUBRIC.]
J. DOLORES MADRID, *Secretary*. [A RUBRIC.]

Secretary of state of the department.

Prefecture of the district of El Paso, No. 28.

With the report that has seemed to me proper, I have the honor to accompany to you the petition which the settlers of the bend of Doña Ana address to the most excellent governor, which petition is appended to the expediente which this prefecture has formed in the matter, which you will be pleased to place before the superior intelligence of His Excellency so that he may add his determination.

God and liberty, town of El Paso, April 19, 1843.

MAURICIO UGARTE, [A RUBRIC.]
J. DOLORES MADRID, *Secretary*. [A RUBRIC.]

Secretary of state of the department.

TOWN OF EL PASO, *April* 19, 1843.

Let the regulation and order of the junta appearing in the expediente be observed in the settlement of Doña Ana as the general headquarters will soon properly provide, as to the detachment and arms asked for, inasmuch as the settlers will be exempted from military service, but in their turn they will render that service, for from the general tax they cannot be exempted. The request made by citizens of other towns cannot be acceded to; that although the governor desires personally to become acquainted with the locality of the settlement, his pressing engagements and business that require his attention in Chihuahua do not permit him to go there. They are permitted for this year to work the lands they apply for, his excellency the governor desiring that, without loss of time, be carried into effect the settlement of the bend of Doña Ana. In view of the expediente in the matter which you furnish me with your note of today, His Excellency has directed that the regulation on this subject, issued on July 31, 1840, be observed, and which appears in the expediente referred to, which I return to Your Honor,

for the same embraces all that is necessary to enable your prefecture to act in this matter with due correctness, and His Excellency therefore desires that Your Honor at once give the people orders to the end that the settlement of Doña Ana receive the necessary impulse. In regard to the petition which some of the colonists at the said point have recently addressed to His Excellency, and which has been added to the expediente, his excellency the governor directs that Your Honor be informed, as I do inform you, that the general headquarters are now giving the proper orders for the purpose of furnishing some detachments arms and ammunition as they ask,
293 that the settlers of Dona Ana remain exempted from military service, for this will be rendered by them only in their town in such manner as may be necessary; they thus cannot be exempted from the payment of taxes, for these are imposed by the supreme government, whose dispositions the most excellent governor cannot alter, nor can he accede to the request they make for citizens of other towns for the construction of the acequia, for those works belong exclusively to the settlers, who only partake of the benefits of the law; that pressing affairs requiring the attention of His Excellency in Chihuahua, he cannot, though he desires, go personally to the land to be settled, as he will do upon another occasion, when he visits this frontier; and finally that there is conceded to those that sign the before-mentioned petition with such others as may be in the same situation to cultivate the lands they ask for this year, until there is distributed to them their land according to the regulation cited, and the laws on the subject. His Excellency hopes that Your Honor with your characteristic energy will act in this matter until you overcome the obstacles presenting themselves, so that the settlement at Dona Ana have effect, to which end the most excellent governor also desires that Your Honor have published this order and cause the same to reach the knowledge of the parties interested; Your Honor reporting to this government all the results in the premises.

God, &c. Town of El Paso, April 19, 1843.

His honor the prefect of the town of El Paso.

AUGUST 10, 1843.

Let the prefect be interrogated as to the condition the settlement of Doña Ana is now in.

MARTINEZ. [A RUBRIC.]

SECTION 1. The most excellent governor desiring to know in what condition the settlement of the bend called the bend of Doña Ana now is, which matter this government commended to Your Honor in an order that I communicated to you under date 19th of April last, he directs me to request of you a report upon this subject, and, in compliance with his order, I inform Your Honor of the same for the consequent ends.

God, &c., August 14, 1843.

Prefect of El Paso.

The prefecture having reported, (it was returned,) the following decree resulted:

CHIHUAHUA, *November* 15, 1843.

This will be returned to the prefecture that it may take the proper measures for ascertaining the truth of the matter, without giving occasion for alarm among the Indians, and that it may furnish in case of necessity any indispensable assistance to the settlers of Dona Ana.

MONTERDE.
BARCENAS, *Secretary.*

Upon the same day this was returned to the prefecture:

Prefecture of the district of El Paso del Norte, number 10.

Although I had devoted myself for the last few days to the formation of the accounts of the branch of taxation *per capita*, of which articles 15 and 34 of the law of April 7 of last year treats,
294 which my predecessors failed to do, so as to forward them by this mail to your superior government, it has not been permitted me to finish on account of being obliged on the 15th inst. to go to the place Dona Ana, for the purpose of distributing the lands to the settler applicants which said superior government has conceded to them. Hence, as well that matter as others that may occur before my return to this town will have to suffer delay in the office, for the reason that it is not permitted to me to deliver the prefecture to the individual the law may designate; the same being according to the regulation of July 31, 1840, on the subject exclusively in charge of the prefect. Be pleased to place this communication in the knowledge of the most excellent governor.

God and liberty, town of El Paso, January 13, 1844.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

Secretary of the government of the department.

SECTION 2. By the note of Your Honor, number 10, of the 13th instant, his excellency the governor is advised that upon the 15th of the same month you would proceed to the place Dona Ana for the purpose of executing the distribution of lands to the settlers applying, taking with you the government of the prefecture with the motive you express; and I advise Your Honor thereof for your information, as directed by His Excellency.

God, &c. January 26, 1844.

[A RUBRIC.]

Prefect of the district of El Paso.

Prefecture of the district of El Paso del Norte, No. 20.

You will be pleased to inform his excellency the governor of my return to this town twelve days after undertaking my trip to Dona Ana, and that the pressure of time does not permit me now to forward the expediente showing the acts I performed, and the titles

for the lands adjudged, for the approbation of His Excellency, but that I will do so opportunely, and with the information I may believe necessary. As the regulation issued for the adjudgment of lands at said place confers that faculty exclusively upon the prefect, and as the latter is twenty leagues distant and overburthened with business by his numerous duties, I request that you be pleased to procure the proper instructions as to whether, whenever many colonists present themselves, the prefect will have to go to distribute the lands, or how this matter should be arranged so as to avoid the delay affecting the other matters peculiar to him, and it might be urgent ones.

God and liberty, town of El Paso, January 31, 1844.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

Secretary of the government of the department.

FEBRUARY 14.

The prefecture may commission such individuals as it may deem suitable for the distribution of lands in cases in which it cannot itself make the same.

[A RUBRIC]

295 SECTION 1. If the prefecture in charge of Your Honor should not, from any cause preventing it, be able itself to make the distribution of lands at the place Dona Ana, to the settlers applying therefor, the same may depute that duty to such individuals as it may deem suitable to perform that operation. His excellency the governor has directed that I communicate this to Your Honor as a reply to the inquiry you make in your note number 20 of 31st January last, which I answer for your information.

God, &c. February 14, 1844.

[A RUBRIC.]

His honor the prefect of the district of El Paso.

Prefecture of the district of El Paso del Norte, No. 93.

The justice of the peace of Dona Ana, under date the 14th instant, states to me the following: "The part which, according to the laws of colonization, is required to be done by all the individuals who have taken possession of lands in this new colony in order that they may obtain from the prefecture under the dignified administration of Your Honor the due title in fee. It is almost impossible to make effective this regulation on account of the misery and scarcities in which these colonists find themselves involved, all of them offering to do it as soon as they harvest the crops of this year. This occasion affords me the opportunity to protest to Your Honor my entire respect." I inclose the same to you, stating, for the information of the most excellent governor, that, owing to this cause,

there has not been issued the respective titles, as I have already reported, nor the lands for house-lots distributed.

God and liberty, town of El Paso, April 19, 1844.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

Secretary of state of the department.

MAY 6.

Entered. [A RUBRIC.]

SECTION 2. By the note of the justice of the peace of Dona Ana, which Your Honor inserts in your letter of April 19 last, his excellency the governor is made aware of the reason why the titles of ownership have not been issued to the settlers of that place for the lands they have acquired, nor the lots for the houses they live in been distributed.

God, &c., May 6, 1844. [A RUBRIC.]

Prefect of the district of El Paso.

Prefecture of El Paso, number 13.

I have forwarded to the justice of the peace of Dona Ana the original expediente formed upon the colonization of that place, empowering him to make the due grants of lands, and issue titles as well to those citizens now located as to those that may go within the term the regulation establishes. In doing so I have had in view the impossibility of acting personally, owing to the repeated incursions of the savages, and having to attend in person to the
296 work upon the river of this town as of vital interest to all its inhabitants; and although I might do it after this as the said justice of the peace of Dona Ana informs me officially that the residents demand their titles, it seems to me proper to do it, as I have stated. You will be pleased to make this known to your superior government for its determination.

God and liberty, El Paso, January 23, 1846.

GUADALUPE MIRANDA. [A RUBRIC.]
JOAQUIN ALVAREZ, *Secretary.* [A RUBRIC.]

Secretary of state of Chihuahua.

The note of Your Honor, No. 13, of 23d of January last, has informed his excellency the governor that that prefecture had forwarded to the justice of the peace of Dona Ana the original expediente formed upon the colonization of that place, empowering him to make the due grants for lands, and issue titles as well to the citizens now located as to those that may go within the term the regulation on the subject prescribes.

God, &c., March 11, 1846. [A RUBRIC.]

Prefect of the district of El Paso.

Roster of the Members of the Auxiliary Company of Infantry of El Paso Who March to the Colony of Dona Ana to Render Their Services.

Sergeant Manuel Provencio.
Corporal José Ma. Lujau.
Soldiers Francisco Provencio.
José Tafoya.
José Vianes.
José Ma. Perea.
José Dolores Apodaca.

Paso, April 30, 1843.

PASO, *August* 12, 1843.

Of the two muskets which were given to Geronimo Lujau, he turned over one of them, which was assigned to José Tafoya, there remaining in possession of the latter the one which was given to him as a soldier.

Expediente Formed Relative to the Colonization of the Bend of Dona Ana Since July, 1840.

Number 3.

In the book for the year 1840, in which this prefecture has registered the communications that are directed to the superior departmental government, there is one found upon pages 17 *et seq.*, of the following tenor:

Number 100.

I have the honor to communicate to you, with the report I have believed just, the accompanying petition of sundry citizens of this town, in order that you be pleased to report the same to his excellency the governor, that he may determine as he shall deem well, again enjoining you, very particularly on my part, the prompt dispatch of the matter on account of the need that these inhabitants have to carry on their enterprise if the superior government accedes to their request.

July 8, 1840.

A copy.

Town of El Paso, April 19, 1843.

J. DOLORES MADRID. [A RUBRIC.]

297 In book third of decrees, circulars, and proclamations, which the prefecture of this district keeps for retained copies, at pages 25 *et seq.*, is found entered a report of the following tenor:

Report upon the petition of sundry citizens of this town who apply to possess the land at Dona Ana, was placed the following:

EXCELLENT SIR: In a report of the 18th of September last of this prefecture, it has been stated to Your Excellency what is proper relative to the lands the petitioners propose to cultivate. These, from the force of the circumstances they now find themselves in, by reason of not having lands to cultivate, with other reasons of no less importance, and that are evident to Your Excellency, cause me to abstain from particularizing very much in detail the miseries that afflict this settlement from the want of grain for its subsistence, and if a portion of the residents of this town do not devote them-

selves to husbandry it is clear that they will always continue in the most miserable condition, owing to the want of the lands they lack, it being certain that if the freshet of the river in the approaching year is equal to the one just occurred, undoubtedly half of this jurisdiction would be lost, together with the town of Real and part of the other towns which the same river has isolated, a motive that obliges the said petitioners to look in time for where to live and not become witnesses of the final ruin.

Notwithstanding the foregoing, Your Excellency, in view thereof, will determine according to your superior pleasure.

Paso, July 7, 1840.

A copy.

Town of El Paso, 19th of April, 1843.

J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

In the book for the year 1839, in which this prefecture has registered the communications it has addressed to the superior departmental government, is found a report to the following effect:

Report Placed Upon the Petition of José Ma. Costales, Its Date 18th of September, 1839.

EXCELLENT SIR: The place Dona Ana, distant from this town ten leagues, a little more or less, possesses abundant and fertile lands to cultivate, and for other purposes. It facilitates with small labor the taking of water to cultivate them by irrigation; and altogether has all the advantages that a new settler needs to obtain the object he desires. For these reasons, and the many others of more weight that are within the observation of Your Excellency, I will not stop to show you that I find no obstacle sufficient for denying to the petitioners their application which has for its object the increasing of the population so necessary for the welfare of a country in all times and circumstances. This is what I can say to Your Excellency on the subject, in order that in view thereof you may decide according to your superior pleasure.

October 18, 1839.

A copy.

Town of El Paso, April 19, 1843.

J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

SECRETARY OF STATE'S OFFICE OF CHIHUAHUA.

The excellent department junta, to whose judgment was submitted by this Government for advice the expediente formed
298 by virtue of the petition of sundry citizens of your town concerning the granting to them of the place Dona Ana, has made the following report:

MOST EXCELLENT SIR: The petition of some citizens of the town of El Paso, praying that there be adjudged them the lands of the place called Dona Ana, distant ten leagues from said town, is without doubt admissible, for it looks to nothing less than the encour-

agement of industry. For as stated by his honor, the prefect of El Paso, in his report, that place being once settled by the petitioners, the rich tillable lands it embraces will be cultivated. This result, as well as the increase of the population so important to all society, and on the other hand the prevention of idleness, to which many of those interested might give themselves up in consequence of not having a single span of land to maintain themselves, induces the junta to decide that, in conformity with the colonization laws, the favor be granted to those interested by the adjudication of the portion of land they are entitled to thereunder, investing them also with all the concessions and privileges the laws confer upon new settlers. This is their opinion; nevertheless, Your Excellency will resolve as you may consider convenient and just in the premises.

In view of the foregoing report his excellency the governor appended the following decree:

In conformity with the advice of the excellent departmental junta, this expediente will pass to the director of the geographical bureau, that at once, and in view of the laws upon the subject, he determine the conditions on which the adjudication of the lands applied for can be made.

[A RUBRIC.]

Whereupon the director referred to reported as follows:

MOST EXCELLENT SIR: I this day comply with the decree of Your Excellency dated 8th of the present July, relative to my reporting the conditions on which should be made the grant of lands to the one hundred and sixteen citizens who ask it at the place Dona Ana, and upon doing so my satisfaction is not complete, only from the just apprehension I experience that my efforts may not produce the result that Your Excellency might have promised yourself. The circumstance that the colonization spoken of is not, according to my understanding, a true colonization, inasmuch as the grant to lands solicited for it is asked by the inhabitants of the department and even of the very district of El Paso; the apprehension that my belief may be erroneous in the matter; the difficulty that presented itself to me, whether or not this ordinance should conform to the general laws of colonization of the Republic, or the special ones of the State; the doubt as to whether some of the latter, not having a manifest conflict with the present system of the government, might be in force; the circumstance that the decreeing power might not have had legislative authority, and the having to prescribe thereupon without exceeding the faculties of the government regulations that might provide well for the establishment of the settlement, preventing at the same time some evils that might be apprehended, were motives that delayed my consideration, and deprived me of the pleasure of having forwarded to Your Excellency this report as soon as you perhaps desired. It will afford me the greatest pleasure, should it conform to the desires of Your Excellency. Should the reverse be the case, Your Excellency can correct it, as well in the matter as in the form, in manner according to your superior pleasure.

299 Regulation preliminary to the granting of lands of Dona Ana among various individuals of the district of El Paso who have asked for them.

Article 1. There is conceded to the one hundred and sixteen citizens that through the honorable prefect of El Paso ask the grant of lands at the place Dona Ana, the necessary permission to proceed to settle the point referred to.

Art. 2. To each person of the petitioners who may proceed to establish himself there, there will be granted, should he be head of a family, the quantity of land included in a square whose side has seven hundred and eighty varas and a half in length; and if he should not be, that which is contained in a parallelogram of equal length and the half of the before-mentioned quantity in breadth. It will be understood that this land is granted that it may contain his irrigable land.

Art. 3. Wherever it may seem most proper, in the judgment of the honorable prefect of the district, to establish the town, there will be measured an area equal to the eighth part of a "sitio de ganado mayor," or two thousand five hundred varas of length and twelve hundred and fifty width, which shall be set asde for the commons of the town. At the selection by the prefect of the spot spoken of he will be governed as far as possible by the provisions of chapter 5 of the regulamentary law No. 32, dated 18th of November, 1833, enacted by the congress of the State.

Art. 4. For the better regularity of the town, the honorable prefect will take care to divide it off in squares, of one hundred varas in length and fifty in breadth, with streets between of twelve and a half varas of width.

Art. 5. Each one of the present petitioners will be favored with the half of a square, or a surface of fifty varas on a side, that he may locate his residence thereon, taking care that these possessions are adjoining one to the other for the greater security of the place. In the most central part of the latter there will be taken four squares; two that are adjoining lengthwise will form the plaza, and the other two will be appropriated for the town-house, church, and minister's residence, when there shall be any.

Art. 6. The petitioners should remove to that place as quickly as possible under the direction of the honorable prefect of the district, who will make them the distribution of the lands according to the provisions of this regulation and the existing laws.

Art. 7. None of these can withdraw from the place before two years without previous permission of the government, and those that do so shall forfeit the lands that may have been given them.

Art. 8. The settlement will remain for the present subject to the honorable prefect of the district of El Paso, to be considered as belonging to the district of the same name.

Art. 9. The lots being assigned and the families established upon them, the municipal government of the town will be regulated in conformity with the provisions of the regulamentary law of 20th of March, 1837, and in accordance also with the regulation issued by

the excellent departmental junta, and ordered to be observed by this superior government on the 2d of November, 1839.

Art. 10. The maximum term of time conceded to the settlers to remove to the point they solicit will be three months, counting from the day in which is received this regulation by the respective prefectures. The individuals who shall not within that time
300 repair to receive the lands corresponding to him, shall make appear before that authority the legal impediment that might have detained him; or if the contrary, he will lose the right that by the foregoing articles was conceded him.

Art. 11. Immediately after the half and one more of the colonists have assembled at Dona Ana, the honorable prefect will proceed to establish for them their municipal government agreeably to the provisions of article 9 of this regulation, naming a proprietary judge and an alternate, which this government authorizes him to do in virtue of the power granted it in article 7 of the 2d of November aforesaid.

Art. 12. All national citizens who, in the term of one year, counting from the day spoken of in article 10, present themselves asking lands in the place referred to, will be granted the same as the new settlers, except the land designated to the latter for residences in the center of the settlement. To no alien will entrance in the latter be permitted without he has shown to the political authority the proper passport.

Art. 13. The petitioners of which the previous article speaks should direct themselves to this government through the respective prefects, who upon making the proper report will do so according to his views of the industry and integrity of the applicant.

Art. 14. As the persons referred to in the two preceding articles upon establishing themselves in the new colony, enter upon the enjoyment of conveniences proportionate to the work of their predecessors, to the end that like them they may contribute to the prosperity of the settlement, they will pay five per cent., calculated upon the just value of the land granted them. This tax will be exacted but once and will be applied to the fund of ways and means.

Art. 15. There will also be applied to the creating of the fund of ways and means the price of the lots situated in the commons of the settlement, which may be sold at the valuation designated for them.

Art. 16. In the grants that may be made to the new applicants care shall be taken that they be situated in places immediatly following those already granted.

Art. 17. As well these as the first settlers may acquire title by purchase up to three "suertes" equal to the amount granted of land to be cultivated and an entire square of those established for residence.

Art. 18. The price of the "suertes" and lots mentioned, will be for the present one-half of their present value in the town of El Paso.

Art. 19. The particular obligations of the new settlers are:

1st. To begin to prepare their land within the term of six months.

2d. To contribute with their assessments established by the laws to the fund of ways and other funds therein designated.

3d. To present themselves armed upon the calls of the political or military authority, alternating half about all the persons capable of bearing arms in the ordinary cases that may arise. When imminent danger calls for a greater number of men they shall all come forward that have been called for by the authority.

4th. To contribute with their personal services in the construction of a dam or acequia, and to the repair or reconstruction whenever the civil authority shall deem it necessary. Their successors shall each bear the same obligations.

Art. 20. The honorable prefect of the district will concede to the new settlers the water necessary for their fields, reporting to this government concerning the manner in which he may believe the distribution thereof should be made, and the manner in which irrigation should be regulated.

Art. 21. The individual who for two consecutive years shall prove himself before the prefect of the district to be the hardest
301 worker or most industrious of the place shall be rewarded with half a suerte of land of those assigned to the heads of families. This reward remains standing only for the term of the first four years.

Art. 22. The ordinary municipal fees that the new settlers shall pay will be the same as are now customary at the capital of the district to which the settlement remains subject.

Art. 23. The government will endeavor, in conjunction with the illustrious bishop, to see that they be supplied with a parish priest to administer to their spiritual wants.

Art. 24. They will not pay tithes for the products they raise from the new fields according to the provisions on this subject of the law, but what may be established by agreement with the said minister.

Art. 25. The obligations, rights, and concessions of which the present regulation treats, will be considered to be established without prejudice to what may have been determined in the premises in the regulation of colonization issued on the 24th of September, 1827, by the congress of the State and the other existing provisions.

And the foregoing regulation depending upon the sanction of the most excellent governor, he has seen proper to approve the same provisionally in virtue whereof he directs me to say to Your Honor, as I do, that in pursuance of what the same provides, and of the bases prescribed by the excellent junta in its included report, Your Honor proceed to the adjudgment of the lands applied for, and to establish the settlement according to the rules provided, reporting to this government what shall be done in virtue of this determination.

God and liberty, Chihuahua, July 31, 1840.

AMADO DE LA VEGA. [A RUBRIC.]

Hon. prefect of the district of El Paso.

SECRETARY OF STATE'S OFFICE OF CHIHUAHUA.

The present most excellent governor, Francisco Garcia Conde, was aware since his assuming the government, how proper and beneficial would be for the welfare of the people of El Paso, the establishment and settlement of the place Dona Ana that some individuals had solicited by petition on the 18th of September of last year, which was found pending in this secretaryship, and therefore His Excellency was pleased to issue upon the 31st ultimo the necessary orders to your perfecture to proceed to the granting of said lands and establishment of the settlement with all the requisites required by the laws. All of which I communicate to Your Honor by his order, and in reply to your official note relative thereto of the 8th of the said month with which you accompany a new petition on the subject from the citizens interested of your town.

God and liberty, August 5, 1840.

AMADO DE LA VEGA. [A RUBRIC.]

His honor the prefect of El Paso.

(*Circular.*)

OFFICE OF SECRETARY OF STATE OF CHIHUAHUA.

Under date of 18th of September, 1839, one hundred and sixteen citizens of the town of El Paso presented themselves to this superior government through the proper channel, praying that there might be adjudged to them the cultivable lands situated upon the margins of the Rio Bravo (distant ten or twelve leagues north of El Paso,) at the place commonly known by the name of bend of Doña
302 Ana. This government, in consideration of the laudable object these individuals propose in view of the provisions now in force, as well general as special, that authorize this class of grants, knowing that with this act is protected and encouraged the useful branch of agriculture one of the fountains most productive of wealth and public prosperity, and finally persuaded that by this means many arms which in consequence of our unfortunate circumstances of poverty being as they now are idle, will become busy and productive, agreed to concede to them with the concurrence of the excellent departmental junta the favor they asked. For this purpose this same government undertook to establish the bases on which the said adjudgment should be proceeded with, bearing in mind, in doing so, that the same ought to yield a result which would be the more satisfactory in proportion as the grant and the duties by it imposed on the farmer should be united with his individual interest; for which reason there was conceded to the petitioners for land to cultivate the exclusive title of a caballeria of land to the heads of families, and the half of that quantity to those that are not, adjudging to each the lot indispensable for a residence in the commons of the new settlement to be established; also it was not forgotten to leave unappropriated the necessary space for the prosperity of the colony, and with this intention it was provided that all natives who within the term of one year, counting from the

date of the establishment of the colony, might present themselves to the government through the proper channel asking the same favor, it might be conceded them with some slight modifications, the same being that these individuals entering in possession of the piece of land assigned them shall have to pay for once only five per cent. calculated upon its value, and also have to purchase at its full value the lot they may apply for in the settlement, with the object that the former of these products as well as the latter be turned over to the fund of ways and means of the colony; and as this arrangement should be within reach of all the inhabitants of the department, the most excellent governor has directed that this notice be circulated for the purpose indicated, and with that of inviting such honest and industrious poor citizens as may desire to settle in the new colony, reminding them of that wise maxim "that if permanent felicity were compatible with human nature it should be sought in the fields," and that other none the less wise and much more comprehensive, that serves as a motto of one of our modern enlightened periodicals, to wit, "of all things that can be undertaken or sought in the world, nothing is better, nothing more useful, nothing sweeter or more worthy the free man than agriculture." Which I have the honor to communicate to Your Honor by direction of his excellency the governor for the proper purposes.

God and liberty, Chihuahua, August 13, 1841.

AMADO DE LA VEGA. [A RUBRIC]

His honor prefect of El Paso.

On the 24th of August, 1841, this was circulated throughout the district under my authority.

OFFICE OF SECRETARY OF STATE OF CHIHUAHUA.

His excellency, the governor, having examined the petition of some citizens of Senecú requesting the lands of the natives, and also the report of Your Honor showing the just rights of the latter, and the difficulties that would result from granting the petition of the former, has been pleased to decree in conformity with Your
303 Honor's report instructing me that in communicating this I charge you in the name of the government to assure the petitioners that His Excellency will furnish them at the place Dona Ana all the advantages they desire.

I reiterate to Your Honor my consideration and esteem.

God and liberty, Chihuahua, December 15, 1840.

JUAN N. DE URQUIDE.

His honor the prefect of El Paso.

To his honor the prefect of this district:

We, the citizens, who at the close hereof sign, residents of this town, before Your Honor, with due submission and respect, present ourselves, saying—that being ready to proceed to the point Dona Ana the first of the ensuing month to engage in constructing the acequia to furnish sufficient water for the irrigation of the lands at said point which the kindness of the superior government saw proper to con-

cede under date of 31st July, 1840, that we might colonize the same, in which enterprise the war of the savages and other causes of not less whight have delayed us, there remains to us to ask of Your Honor that you grant us the permission to carry it out. For this purpose we hereby petition, believing confidently that our request will be acceded to, and that an enterprise of so much utility to the nation and general prosperity of the colonists—

We therefore humbly ask and pray Your Honor with the utmost earnestness to be pleased to defer to our prayer, whereby we will receive the favor, grace, and justice we seek.

Town of El Paso, January 26, 1843.

BERNABÉ MONTOYA.	RAMON DIAS DE LA SERNA.
JOSÉ MA. COSTALES.	ELENTERIO PEREA.
CRISTOBAL PROVENCIO.	YRINEO LUJAN.
BRIGIDO PROVENCIO.	RAFAEL PROVENCIO.
NASARO HERRERA.	FRANCISCO TELLEZ.
SANTOS AVALOS.	JOSÉ YNES CORONA.
FELIPE HERRERA.	GREGORIO HERRERA.
PERFECTO AVALOS.	ADANTO TRUJILLO.
CATARINO TRUJILLO.	ESMEREGILDO CANO.
JN. TRUJILLO.	JOSÉ GARCIA.
JOSÉ MA. RODRIGUEZ.	JOSÉ BIANES.
PABLO MELENDRES.	GREGORIO DAVALOS.
JOSÉ MA. BERNAL.	JESUS ALIVARES.
JOSÉ MA. CORDOBA.	JESUS CORDOBA.
JOSÉ ANTONIO GALLEGOS.	JULIO MADRID.
TEODOSO ZAMORA.	BONIFACIO ARMIJO.
ESMEREGILDO MONTAYA.	

Instructions by which Bernabé Montoya will be governed as agent for this prefecture to command the persons who this day proceed to the place of the new settlement of Doña Ana for the purpose of taking out the main acequia, which instructions he will observe while they may be at work at the said place in the manner following:

1st. From the moment in which he shall commence his march from this town for Dona Ana he will take care that the party travel with order sufficient to protect it from any disastrous surprise from enemies.

2d. Being at the said place Dona Ana, he will also take care that in apportioning the labor he has to commence, he do so in such way that they can be protected in case they are attacked by enemies.

304 3d. He will examine with great care the point where the main acequia will be taken out, to the end that upon commencing his work, he will endeavor to obtain all the land possible, inasmuch as thereby depends the welfare of the large population which in time may be formed.

4th. Said main acequia will have for the present the width of two varas, or two and a half, it remaining at the will of the maker thereof to give it the depth the ground may allow, always endeavoring to obtain that the most elevated of the lands may be irrigated.

5th. He will take special care that the course of the said acequia lead to the nearest part of where on account of the elevation or solidity of the ground the town should be formed.

6th. He will take care that the laborers accompanying him perform their tasks in equal proportion, he being by this prefecture authorized to impose such penalties as may be practicable, in view of the circumstance of being in camp, upon those that disobey or do not comply with this precept.

7th. As the events of the camp it is absolutely impossible to foresee with certainty, unless in the presence of the circumstances and casualties occurring, the prefecture leaves it to the judgment of the said Montoya to dictate all measures he may deem proper, for the just object of defending as well himself as at the same time his subordinates, and to advance as fast as possible as his best judgment may dictate to him the beneficent enterprise placed in his charge, and no one whoever it be will violate in any way the orders and determinations of the said Montoya under penalty of the liability which according to the nature of the offense or crime will be made effective against the party by this prefecture upon the report he may make to said prefecture on his return or from that point.

8th. If, after arriving at the point Dona Ana, any citizens of this town or of any other town, whether of this or any other department of our Republic, shall present themselves for the purpose of joining the new settlement, he will admit them, noting, in a roll he will keep, the names, day of their arrival, and lands they are assigned to.

El Paso, February 2, 1843.

MOST EXCELLENT GOVERNOR: The undersigned, citizens of this town and at present settlers of the new colony of Doña Ana, by the grace and favor of your superior government appear before Your Excellency with due submission and respect, representing that in consequence of the number of men being small with whom we have gone to begin the taking out of the water at the said point, owing to not following us all who signed the petition in which we asked that we might be permitted to colonize the aforesaid place, innumerable injuries of considerable magnitude have resulted to us, of which not the least is the being unfinished of the taking of water to the place that we have selected as suitable to make the settlement and to locate our cultivable lands, in virtue of which and believing confidently that Your Excellency has to protect us as far as your ample powers may permit, so that we may carry out an enterprise of the greatest utility to the nation and to ourselves individually, we can do no less than apply to Your Excellency, praying with the greatest earnestness that you be pleased to concede us that which we ask upon the following points:

1st. That we be furnished with a detachment of troops for the safety of our persons and interests.

2d. That we be furnished with a resupply of arms and ammunition.

3d. That there be waived military service to which some of our companions are obligated.

305 4th. That we be exempted from the taxes we suffer.

5th. That we be promptly furnished ten men from each district for the term of eight days so as in this way to finish the acequia, or that all who signed be compelled to repair thereto until its conclusion.

6th. That we be furnished the regulation by which we must govern ourselves in our new colony as was offered us by the predecessor of Your Excellency.

7th. That, should your high and increased engagements permit it, Your Excellency do us the favor to go and become acquainted with our lands, so that you may be persuaded of the advantages that would result to our department by colonizing them.

8th. That if we cannot, owing to the shortness of the time, finish the acequia, we be permitted to go and cultivate this year the lands we have cleared, without prejudice to your ordering that the distribution of the lands be made, and that we take those which may suit us to put our property on. This is what we ask, and therefore we humbly ask that Your Excellency be pleased to defer thereto, whereby we will receive the favor, grace, and justice we seek, being pleased to receive this petition upon this common paper, there being none of the proper stamp in the revenue office at this time, without prejudice to reposition.

Town of El Paso, April 16, 1843.

JOSÉ MA. COSTALES.	BERNABÉ MONTOYA.
RAMON DIAS DE LA SERNA.	PABLO MELENDRES.
JESUS CORDOBA.	JOSÉ YNES CORONA.
JOSÉ MA. RODRIGUEZ.	GERONIMO LUJAN.
ELEUTERIO PERERA.	JOSÉ ANTONIO GALLEGO.
JESUS OLIVARES.	JOSÉ MA. BERUAL.
JOSÉ BIANES.	JOSÉ MA. SIERRA.
GREGORIO DAVALOS.	JOSÉ MA. LUJAN.
TIMOTEO MANTOYA.	PEDRO AGUIRRE.
PEDRO TRUJILLO.	JOSÉ TAFOYA.
JOSÉ MA. VALENCIA.	JULIO MADRID.
TEODOCIO ZAMORA.	JOSÉ MA. CORDOBA.
FELIPE MADRID.	MIGUEL NEVAREZ.

MOST EXCELLENT SIR: Those who sign and are the principal men in this petition presented themselves, in September, 1839, together with other residents of this town, to your superior government, through the proper channel, praying that there might be adjudged them the cultivable lands found on the margins of the Rio Bravo,

known by the name of bend of Doña Ana. The same government granted them, with the concurrence of the excellent departmental junta, the favor they asked in July, 1840; and although after this date the colonists might have put in operation their labors for the purpose indicated, it was prevented by the constant and disastrous war, in which were engaged the savage Indians, and other causes of no less weight which their poverty caused them, until animated by a determination, and taking advantage of the peace that was last year concluded with those hostile to us, addressed to this prefecture on the 26th of January of the present year a new petition, in which they ask, and it was granted them, upon the 2d February last, permission to engage in constructing the main acequia to furnish sufficient water for the irrigation of the lands of said place. It is true all the petitioners have not assisted in the construction of the acequia, and only to the number of eighteen have done so; for which reason I proceed to express my opinion upon the eight points that this petition contains, in the manner following:

306 With respect to the first, it seems that the detachment is unnecessary as the department is in peace, and that the number of troops that might be employed in that place will be more useful in other duties of the service. With respect to the second, eleven muskets, which are now loaned and can be recovered, can well be furnished, but without any ammunition, as there is none, without drawing upon that the garrisons have. What they ask in the third may all be conceded them. The request they make in the fourth can be done when they already place themselves in possession of their lands, paying here temporarily the taxes corresponding to them. With regard to the desire of the fifth, the request seems an exorbitance, since no community can be obliged to lend service to another; the claim of the sixth is answered in the proceedings had that the government might permit them to colonize. With regard to the seventh, it remains with high prerogatives of Your Excellency to concede or deny. With respect to the eighth, the bases upon which they have to begin until the conclusion is regulated. This is what I can state in virtue of what appears in the present petition. But Your Excellency, with your acknowledged judgment, will determine in the matter as you may deem proper.

Town of El Paso, April 17, 1843.

MAURICIO UGARTE. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

OFFICE OF SECRETARY OF STATE OF CHIHUAHUA.

The most excellent governor desiring that without loss of time be carried into effect the settlement of the bend of Doña Ana, in view of the expediente in the matter which you furnish me with your note of today, His Excellency his directed that the regulation on this subject, issued on July 31, 1840, be observed, and which appears in the expediente referred to, which I return to Your Honor, for the same embraces all that is necessary to enable your prefecture to act in this matter with due correctness; and His Excellency therefore desires that Your Honor at once give the proper orders to the end

that the settlement of Doña Ana receive the necessary impulse. In regard to the petition which some of the colonists at the said point have recently addressed to His Excellency, and which has been added to the expediente, the most excellent governor directs that Your Honor be informed, as I do inform you, that the general headquarters are now giving the proper orders for the purpose of furnishing some detachment, arms, and ammunition as they ask; that the settlers of Dona Ana remain exempted from military service, for this will be rendered by them only in their town in such manner as may be necessary; that they cannot be exempted from the payment of taxes, for these are imposed by the supreme government, whose dispositions the most excellent governor cannot alter, nor can he accede to the request for citizens of other towns which they may make for the construction of the acequia, for those works belong exclusively to the settlers, who only partake of the benefits of the law; that pressing affairs requiring the attention of His Excellency in Chihuahua, he cannot, though he desires, go personally to the land to be settled, as he will do upon another occasion when he visits this frontier; and, finally, that there is conceded to those that sign the before-mentioned petition, with such others as may be in the same situation to cultivate the lands they ask for this year, until there is distributed to them their land, according to the regulation cited, and the laws on the subject. His Excellency hopes that Your Honor, with your characteristic energy, will act in this matter until you overcome the obstacles presenting themselves, so that the
307 settlement at Dona Ana have effect, to which end the most excellent governor also desires that Your Honor have published this order and cause the same to reach the knowledge of the parties interested, Your Honor reporting to this government all the results in the premises.

God and liberty, Town of El Paso, April 19, 1843.

JUAN N. BARCENAS, *Secretary.* [A RUBRIC.]

His honor the prefect of this town.

OFFICE OF SECRETARY OF STATE OF CHIHUAHUA.

SECTION 1. The most excellent governor, desiring to know what may be the present condition of the settlement of the bend called Doña Ana, which matter this government recommended to Your Honor, in an order which I communicated to you, under date 19th of April last, he directs me to request of Your Honor a report upon this subject; and in compliance with his order I inform Your Honor thereof for the proper purposes.

God and liberty, Chihuahua, August 14, 1843.

JUAN N. BARCENAS.

To his honor the prefect of the district of El Paso.

MOST EXCELLENT SIR: The bend of Doña Ana is as yet settled by fourteen residents, who are the first settlers. These, overcoming dangers and anxieties, have realized a fair crop of corn of somewhat more or less than a hundred carretas, which make twelve hundred

fanegas, and other products, such as beans, cotton, and other garden stuff, &c. The constancy of these individuals in not abandoning the enterprise, seeing themselves quite frequently in danger of losing their lives by the repeated threatenings of the Apaches, as Your Excellency will perceive from the accompanying order, issued by Citizen Lorenzo Provencio, entitles them to the paternal consideration of your superior government; they, therefore, requesting of the commanding general a detachment of troops larger than the present one; for by its protection those inhabitants will continue and carry forward their labors with greater tranquillity, and the increase of the settlers, who are restrained from doing so by a justified fear of suffering an aggression of the Apaches or Comanches, which they themselves could not resist, would be progressive. If Your Excellency, in whose superior hands it is to have the condescension to order the increase of the said detachment, and to provide arms and ammunition to the new settlers, this prefecture, without being mistaken, can assure you that according to the inclination it observes in many persons to be residents of Dona Ana, upon the return of a couple of years it will be a settlement which will cause itself to be respected by the tribes which today it dreads.

This is what I can report to Your Excellency in the matter, for your superior information and ulterior action.

A copy of the foregoing superior order, and of this report, will be made to remain in this archive, forwarding the original to the secretary who issued it in order that he may be pleased to place it in the superior knowledge of the most excellent governor.

Town of El Paso, 30th of October, 1843.

JOAQUIN VELARDE.

JOSÉ DOLORES MADRID, *Secretary.*

A copy. El Paso, October 30, 1843.

JOSÉ DOLORES MADRID, *Secretary.* [A RUBRIC.]

308 A seal, seal 4th, two reals, years of eighteen hundred and forty-four and eighteen hundred and forty-five.

His honor the prefect of El Paso:

The undersigned, as new settlers of this colony, by a grant which the supreme government made to us therefor, appear before your honor with due submission and respect, representing that finding ourselves upon the ground with everything necessary to commence to work, we ask of your authority, with the greatest earnestness, that you be pleased to have the goodness to come to distribute to us the lands which correspond to each in view of the damages that result to us from letting pass the proper time for the sowing of wheat; for although we have not completed the acequia to the point where it should be, we judge that within five or six days we ought to accomplish it according to the number of workmen we have on the work. Therefore we humbly ask and pray Your Honor to be pleased to defer to our prayer, being convinced that the necessity of having at the same time at this settlement the oxen necessary, and peons sufficient

to work with, compels us to disturb the occupied attention of Your Honor with the justice that we ask. We declare this is not in dissimulation, and as necessary, &c.

Santa Maria de Dona Ana, January 9, 1844.

JOSÉ MA. COSTALES.

(And 51 others named.)

TOWN OF EL PASO, *January* 10, 1844.

This petition will be attached to the expediente relative to the colonization of Da. Ana, and notices will be posted for the information of the public and of those interested, announcing that
309 upon the 15th or 16th instant I shall commence my march to execute the distribution of lands conformably to what is ordered by the superior government of the department.

REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

TOWN OF EL PASO, *January* 16, 1844.

There being already at the bend of Doña Ana some citizens of those who have applied to settle the same, and they requesting that the adjudgment conceded them of the lands be executed as soon as possible, what is provided for by the superior government of the department in the foregoing regulation annexed to the expediente on the subject will be executed in all its parts by me, Antonio Rey, prefect of the district of El Paso.

REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

BEND OF DOÑA ANA, *January* 19, 1844.

Under the order of the superior government to make the distribution of lands which has been conceded to the new settlers at this place, the parties interested will be cited to appear as adjoining settlers on this day, when the measurements should be commenced.

REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

Plan Showing the Extent of the Area Embracing the Lots of Land which Have Been Distributed to the New Settlers of the Bend of Doña Ana.

(Here follows plat.)

A seal, seal 5, half a real, years one thousand eight hundred and forty-four, and one thousand eight hundred and forty-five.

310 *List of the Lots of Land Distributed to the Settlers of the Bend of Dona Ana by the Prefect Antonio Rey, with the Number of Lots that Each One Has.*

(Here follows list of lots distributed and names of allottees.)

Dona Ana, January 24, 1844.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

Appointment of Justice of the Peace.

Exercising the power which the law of 20th of March, 1837, and the superior government in the regulation by it approved July 31, 1840, for colonizing this point, confers upon me, I have appointed you justice of the peace for this new settlement, to the end that you immediately take possession of that office. You will present yourself at once to take the proper oath.

God and liberty. Dona Ana, January 25, 1844.

ANTONIO REY.

Messrs. Pablo Melendres and Jose Ma. Costales, justices of the peace.

A copy. El Paso, January 25, 1844.

JOSE DOLORES MADRID, *Secretary.* [A RUBRIC.]

To the justices of the peace and people of this place:

Charged by the most excellent governor of the department with the establishment and regulation of this new settlement, I do make known to you that having determined that the distribution of lands be made to the new settlers of this extensive bend—a place very fertile, and from its size advantageous for agriculture—I have laid off therein 69 lots of land, 47 of 780½ varas long and the same in width, for those who are the heads of families; and for those
311 who are not, 22 of the same length and 390¼ varas in width, marking with stakes where the owners should put the corresponding landmarks which the laws prescribe for the same, will be this day distributed in conformity with what I am directed to do, adverting that the former commence on the north side from a short distance this side of a branchy cottonwood distant 790 varas from where the houses now are in the space between them and the mouth of the acequia, and on the south they extend from the further side of Las Cruces, about thirty varas this side of the little cottonwood. It is impossible that these measures be perfectly exact, as well owing to the mountains and elevations of so great extent as to the want of instruments; but I believe sufficiently so that the number of varas corresponding to each one and the point whence the measures commence may be known. At the mouth of the acequia, although up to this time danger does not threaten, a sufficient palisade is necessary for the greater protection which can be made opportunely, and from there the acequia should be opened with the width of three square varas, so that sufficient water may enter to irrigate the fields upon the right, and those upon the left, without prejudice to that which should go to the town, for which purpose the overseer for the main acequia will be in the intermediate space from the barracks to the mouth of the acequia at the point most suitable that he may direct the water advantageously. To form the settlement I have selected an elevation which, although it does not quite meet my wish, from its circumstances seems at present to be the place most suitable. It possesses a fair view, overlooks a large portion of the fields, and I promise myself that its inhabitants will always enjoy

the best health. Every enterprise at the beginning, however small, presents great difficulties, but energetic and industrious men overcome them all with time and perseverance, when they are persuaded that in the end they will see realized the fruits of their efforts entering into the enjoyment of those comforts which render life happy, and which those who having no goods or property see themselves enslaved in order to earn the sustenance necessary to live, cannot enjoy. The lands distributed are fertile in their nature, and susceptible of great advantages in agriculture. The supreme government has granted them with a liberality which you yourselves have admitted, alleging that owing to poverty it will be impossible to cultivate them, and it is for you to reanimate yourselves and avail yourselves of them, scorning that hydra from which the same sacrifices have been made in all those colonies which are cities today.

New settlement of Doña Ana, January 25, 1844.

ANTONIO REY.
J. DOLORES MADRID, *Secretary.*

I, citizen Antonio Rey, prefect of the district of El Paso, in the bend of Doña Ana, on the 25th of January, 1844, having received the replies of the principal and alternate justices of the peace annexed to these proceedings, the designation of jurisdiction may be proceeded with by me, wherefore exercising the authority which the most excellent governor has conferred upon me, I designate as jurisdiction to this new settlement of Doña Ana, 2,500 varas toward the north, and the same toward the south; 1,250 toward the east, and an equal number toward the west, counting from the center of the main plaza assigned to said settlement; and in testimony whereof I sign with my secretary.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

312 In the bend of Doña Ana, upon the 25th of January, 1844, I, Antonio Rey, prefect of the district of El Paso, agreeably to what is provided in article 3 of the regulation issued for the government of this new settlement, do designate for its commons an area of 2,500 varas in length and 1,250 varas in width, measured from the center of the plaza to the principal one; and in testimony whereof I sign with my secretary.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

At Dona Ana, January 25, 1844, I Antonio Rey, prefect of the district of El Paso, in pursuance of the commission I have from the most excellent governor of the department, will proceed to the distribution of lands and lots of the settlers who apply to locate and settle at this new settlement by issuing to them the proper titles; thus I provided, ordered, and signed with my secretary.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

At the place Dona Ana, January 25, 1844, I, Antonio Rey, prefect of the district of El Paso, commissioned by the most excellent governor of the department for the formation of this town, and distribution of lands and lots to all those who may settle thereon, having to designate a site upon which to build a church, house where the parish priest may reside, and the public buildings, do designate, in accordance with article 5 of the regulation of July 31, 1840, a square of 100 varas in length and 50 in width, upon which said edifices may be erected, which square is situated in the plaza on the side looking to the south, its boundaries being toward the cardinal points, the public streets of this town. In testimony whereof I sign with my secretary.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

JUSTICE'S OFFICE OF DOÑA ANA.

By the note of your honor dated yesterday, I am informed of the appointment of justice of the peace that you have made in my person for this place; and respecting the precept of the law, notwithstanding my notorious inadequacy, I will endeavor to justify the compliment. This occasion affords me the opportunity to assure Your Honor of the considerations of my esteem.

God and liberty, Doña Ana, January 26, 1844.

PABLO MELENDRES. [A RUBRIC.]

His honor the prefect of the district of the town of El Paso.

OFFICE OF ALTERNATE JUSTICE OF DOÑA ANA.

By the note of your honor dated yesterday, I am informed of the appointment that you have made in my person; and respecting the precept of the law, notwithstanding my inadequacy, I shall endeavor to justify your compliment. This occasion affords me the pleasure of protesting to Your Honor assurances of my esteem.

God and liberty, Doña Ana, January 26, 1844.

JOSÉ MA. COSTALES.

His honor the prefect of the district of the town of El Paso.

At Doña Ana, 26th January, 1844, I, Antonio Rey, prefect of the district of El Paso, having discharged the commission conferred upon me by the superior government of the department for
313 the erection of the new settlement of Donna Aña, formation of the municipal government, designation of its extent or jurisdiction, and distribution of its lands and lots among the settlers that might desire them and to settle and live upon them, directed that the same be appended to the record of inhabitants which has been formed, and that a duplicate being made of all the proceedings I have executed in said establishment the same be officially transmitted to the proper justice, to the end that he filing the same, the designation of sites, jurisdiction, lands, and lots which I have made may appear in all time. This expediente being transmitted origi-

nal to the most excellent governor for his superior information. Thus I provided, ordered, and signed with my secretary.

ANTONIO REY.
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

DEPARTMENT OF CHIHUAHUA,
NEW SETTLEMENT OF DOÑA ANA.

Record of the present residents and inhabitants in this new settlement:

(Here follows 61 names of persons and their ages.)

314 ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretarg.* [A RUBRIC.]

DEPARTMENT OF CHIHUAHUA,
Jurisdiction of the Town of Dona Ana.

Statement Showing the Number of Inhabitants in this New Settlement of Doña Ana, with Distribution of Classes and Conditions of Both Sexes, Including Children.

	Men.	Women.	Boys.	Girls.
General summary of residents.....	107	59	48	47
General summary of Indians.....	0	0	0	0
Totals.....	107	59	48	47
General summary of married	44	44	....	....
General summary of widows.....	5	....	....	....
General summary of single.....	58	15	....	....
Totals.....	107	59	48	47

New settlement of Doña Ana, date as above.

ANTONIO REY. [A RUBRIC.]
J. DOLORES MADRID, *Secretary.* [A RUBRIC.]

315 PREFECTURE OF THE DISTRICT OF EL PASO DEL NORTE.

By reason of the petition which appears from page 24 to 25 of this expediente, signed by fifty-five citizens, and of the respected orders of the superior government for the purpose of endeavoring to render the settlement of Doña Ana effective as soon as possible, I found I was obliged to be at that place to make the adjudgment of lands, for which purpose I was appointed prefect of the district. Upon my arrival I caused the settlers to assemble; I informed them of the regulations upon the subject, approved by the most excellent

governor, and of the other orders for colonization. The census of the inhabitants was taken; and taking this for a basis, I proceeded to the measurement, distribution of lands and other acts which appear in the corresponding expediente which I forward to you original. There is also conceded to the new settlers the necessary water for their fields; and complying with the 20th article of the said regulations I should state that, in my humble opinion, its distribution may be made by hours, designating 36 to the larger lots and 32 to the smaller, beginning the irrigation at lots No. 1 and 69; being able afterward to make such alterations as experience may prove to be proper and just. I also deem proper to enlarge this report to state the circumstances that occurred worthy of the knowledge and attention of the superior government, and in consequence proceed to show them. Upon my appearing at Dona Ana, I was spoken to in the name of some citizens of means in this town that they might be furnished lands, they obliging themselves only to place peons to cultivate them; but I, as I did not believe myself authorized to do so, and as I have learned that the intention of many is solely to take advantage of the abundant fruits of those fertile lands, decided that that question pertained to the government, and that I ought to limit myself to reporting, as I do, for its superior determination. Upon leaving for this town I directed the justice to order that all the parties interested to whom lands had been distributed, present in due time to this prefecture the proper papers which should be filed for issuing to them their titles, but up to this time there are but six papers; and this is the reason why I do not yet forward them for the approbation of His Excellency. Finally, I have plainly observed since going to Dona Ana that the generality of the petitioners were discouraged, and that they did not justify hopes of earnestness in their applications, either on account of their poverty, or because they are not animated to carry out their undertakings. I now see my ideas already corroborated by the notice which the justice of the peace of that place has forwarded me, in which appear 31 citizens who have renounced their right, together with the corresponding families, amounting to 111 persons of all sexes and ages. That place is thereby again reduced to a very small number of inhabitants. I believe that it will not be established before they commence to receive injuries from the Apaches, and in the end will be abandoned, and perhaps we shall have to lament some calamities; all of which I state to you to the end that the most excellent governor, to whom you will please report, may be pleased to determine as may be his pleasure concerning the points embraced in this report.

God and liberty, Town of El Paso, March 17, 1844.

ANTONIO REY. [A RUBRIC.]
JOSE DOLORES MADRID, *Secretary*. [A RUBRIC.]

To the secretary of state of the department.

316 A copy faithfully and legally made by direction of the citizen-governor of the State from the documents contained

in the two original pamphlets on file among the archives of the secretary's office in my charge relative to the granting of lands made in favor of sundry citizens of the town of El Paso for settling the place called Dona Ana, ten leagues from said town, which documents commenced in the year 1840, and terminated in the year 1844.

Chihuahua, March twenty-eight, eighteen hundred and seventy-one.

[SEAL.] JUAN B. ESCUDERO, *Secretary.*

TERRITORY OF NEW MEXICO,
COUNTY OF DONNA ANA.

The foregoing is a correct translation of the original documents, filed herewith in the Spanish language, to the best of my knowledge and belief.

Sworn to and subscribed before me this 17th day of January, 1874.

Witness my hand and the seal of court, the day and year last aforesaid.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of the Court of Dona Ana, New Mexico.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *January* 31, 1874.

The foregoing translation of one hundred and five pages, having been by me carefully compared with the document in Spanish, whence it was made and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

(*Testimony in the Case.*)

IRINEO CASTALES, being first duly sworn, testifies as follows: I live in Dona Ana, county of Donna Ana, and Territory of New Mexico; I am forty-five years of age; I know where the Doña Ana grant, which was made by the Mexican government to Doña Anna colony, is situated. It is in the present limits of the county of Donna Ana, Territory of New Mexico, and in territory which was acquired by the treaty of Guadalupe Hidalgo, from the government of Mexico. It includes within its limits the towns of Dona Ana, Las Cruces, and Tortugas. The lands granted consist of the lands of the Doña Ana bend, (El Ancon de Doña Ana). Said bend extends from the head of the Doña Ana acequia, above said town, down Rio Grande river on its eastern bank, to place on said river known as the Brazitos, where was the head of a ditch belonging to Juan Antonio Garcia, and where his grant commenced and extended south. Since the Doña Ana grant was made, the Rio Grande river in some places has changed. Where it has changed, I refer to the old river bed, (now known as such,) as the line of said grant of Doña Ana on the west. The said Rio Grande river was the

western boundary at the time the said grant was made. The said grant of Doña Ana also included the foothills, on the east of the valley lands, described for pasturing purposes. My father José Ma. Castales was one of the principal colonists of said Doña Ana
317 colony. I know the boundaries of said grant, because I have been with parties when the boundaries were established, and the said boundaries have been recognized by every one, as such, ever since. My father took an active part in the colony, and I have my knowledge of the facts I have stated by being with him when he was engaged in measuring lands on the grant, and acting for the interests of the colony. I have no interest now whatever in the said colony of Doña Ana, or the said grant of lands.

I went upon said grant with my father, and have been there ever since. The grantees, over one hundred, entered into possession of said grant of lands and have continued until now in possession of same. They and their heirs have always been considered and recognized as the legal holders and owners of the lands before described by every one as well as the authorities of the Mexican government. There are over three thousand, perhaps four thousand, inhabitants now living on and holding under said grant. The lands of said grant are non-mineral; consist of agricultural and pastoral lands solely.

YRINEO CASTALES.

Sworn to and subscribed before me this 29th day of December, 1873. Witness my hand and the seal of court, the day and year last named.

[SEAL.]

DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

FRANCISCO RODRIGUEZ, being first duly sworn, deposes and says: I live in the town of Dona Ana, county of Donna Ana, Territory of New Mexico. My age is forty-nine years. I know the place known as the grant of Doña Ana. It is situate in the present limits of the county of Donna Ana, Territory of New Mexico. It was formerly territory belonging to the Republic of Mexico or Mexican government, and was acquired by the United States with territory acquired at the treaty of Guadalupe Hidalgo. I went to said Doña Ana grant with the colony, when quite young, and have been there ever since. The grant aforesaid was made to the land embraced in the bend of the Rio Grande, known as the bend of Doña Ana. Said bend extends from the head of the acequia of Doña Ana at the north of said grant and bend of Doña Ana, to the Brazito, at the south of said bend and grant, a distance of about twelve miles north and south, up and down said river. The Brazitos is a point on the Rio Grande del Norte at the northern limit of the grant now known as the Stevenson grant, formerly of Juan Antonio Garcia, and where the head of the acequia or ditch of said Garcia took the water from the said River Rio Grande to water lands of his said grant, that is the said Rio Grande formerly run there, but it is now changed. The Rio Grande river aforesaid, between the head of the Doña Ana

acequia, aforesaid, and the Brazitos aforesaid, as it formerly run, that is the channel known as the old river, is the boundary of said grant of Doña Ana on the west. The eastern boundary of said grant is a line commencing one league east of the head of the said acequia of Doña Ana, and thence running to a point one league east of the Brazitos aforesaid, from north to south. This line embraces foothills which were granted the said colony for purposes of pasturage.

The colonists originally numbered over one hundred. They entered into possession of said grant of lands, and cultivated said lands, and have held them without interruption (except once and awhile from Indians that were hostile) ever since. The said grantees and their heirs have been always recognized by the authorities of the government of Mexico, and every one, as the legal
318 owners and holders of the said lands. There are over three thousand five hundred persons now occupying and holding said lands by virtue of the grant of Doña Ana. Said grant was made by the authority of the government of the Republic of Mexico.

Said lands of said grant are non-mineral; they are agricultural and pastoral. I have no interest whatever now in said grant.

FRANCO. RODRIGUEZ.

Sworn to and subscribed before me this 29th day of December, 1873. Witness my hand and the seal of court, the day and year last named.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

GUADALUPE MIRANDA, being first duly sworn, testifies as follows: I live in El Paso, Mexico, and I am sixty-three years of age. I know the grant called Doña Ana, or the bend of Doña Ana. It is known as the colony of the bend of Doña Ana. It is situated on the east bank of the Rio Bravo del Norte, known as the Rio Grande river, from ten to fifteen leagues north of the town of El Paso, Mexico, and within the present limits of the county of Donna Ana in the Territory of New Mexico. It includes the present towns of Dona Ana, Las Cruces, and Tortugas, and is in that portion of the territory of the United States which was acquired from the Republic of Mexico by the treaty of Guadalupe Hidalgo. The said grant embraces the lands included in and known heretofore as the bend (ancon) of Doña Ana. It extends from the mouth of the present acequias of Doña Ana, Las Cruces, and Mesilla, where the water enters said acequias from said Rio Grande to the barancas (high banks) at the head of the acequia of the Brazitos, (a branch of the river.) The place Brazitos is now known as the Stevenson grant, which is the southern limit of the bend of Doña Ana grant. The head of the acequias of Doña Ana, Las Cruces, and Mesilla, is the northern limit of said grant. At this last-named point the Rio Grande makes a bend leaving the foothills on the eastern bank of said river, and bearing southwestwardly and nearing the foothills

on the western bank of said river, and continues near the western foothills of said western bank until said river passes the present town of Pichaco, and thence said river bears toward the east and southeast until it reaches the "Barancas del Brazitos" before mentioned, which place was formerly the head of the acequia of Don Juan Antonio Garcia, whose grant, now known as the Stephenson grant, commenced at this point, and thence extended south. All the land lying between the said River Rio Grande del Norte and the foothills on the east bank of said river, between the head of said acequias of Doña Ana, Las Cruces, and Mesilla, and the Barancas del Brazito, are included in the grant of lands from the government of Mexico to the colony of Doña Ana. The easterm limits of said grant of Doña Ana are one league to the east of a line drawn along the foothills bordering on the east of said bend of Doña Ana, running from north in a southerly direction, from a point opposite and east of the said northern limit of said grant, to a like point opposite and east of the southern limit as before stated, (one league.) This league of land bordering on the east of said bend of Doña Ana, (one league deep,) was for use of colony for grazing purposes, and the lands bordering on the said river, bottom lands, were for agricultural purposes.

The first petition by colonists to settle the bend of Doña Ana, above described, was made to the government of Mexico in the year 1839. The colony was settled under great difficulties, and existed for a time under the most discouraging circumstances—chief difficulty being on account of savages or hostile Indians. At one
319 time it seemed that the colony of Doña Ana would fail, but owing to the liberal grant of the Republic of Mexico to the bend of Doña Ana, a belt of land along the eastern bank of said river, a distance of about twelve miles, the colonists who had abandoned the place again returned with others, and have continued in possession of said grant ever since.

I know the limits of said grant, because I, in company with the prefect, Antonio Rey, prefect of El Paso, in the State of Chihuahua, and Don Pablo Melendrez, measured off lands to the colonists. The colonists petitioned the government of Mexico for the tract of land known as the bend of Doña Ana. Their petition was granted said colonists of Doña Ana, and the lands embraced in the limits above described measured off to them, all in accordance with law. I have reference to the course of the River Rio Grande at the time said grant was made. At the mouth of the acequias, at north limits of said grant, the river is the same; but below it has changed, and the old river bed is the boundary of said grant on the west.

In relation to said grant of Doña Ana, in the year 1846 I was prefect of El Paso, and by virtue of authority I had as such officer from the government of Mexico, I wrote the following to the justice of the peace at Dona Ana:

Sr. justice of peace, Dona Ana:

"This prefecture being so much occupied by the incursions of the savages, and the personal services of myself being required in this

town as of vital importance, I am not permitted to come to your town in person to the distribution of lands to your citizens, for which reason I send herewith to you the 'expediente' in the matter, in order that you may make the distribution of the lands and titles to them to the residents as well as those who shall come upon said colony within the time prescribed by the regulation, concluding that you will not make any distribution until you obtain permission, if it should be necessary, of the supreme government.

"El Paso, January 22, 1846."

This letter had reference more particularly to the giving of title to the several colonists upon said grant. My acts, and those of the justice of the peace, were duly approved by the government of Mexico, the grantees of said grant of Doña Ana entered into possession of the lands before described, and they and their heirs have continually been in possession of the same, and have been recognized as the legal owners and holders of the said grant of lands by every one since said grant was made till now. I know much about said grant, because I was an officer of the general government, acting as its agent (the government of Mexico) touching said grant, and it was deemed very important by the said government of Mexico to establish this said colony. I have examined the documents here, (document hereto annexed,) certified as copies of papers pertaining to the said Doña Ana grant, in the archives of secretary's office, State of Chihuahua, by Juan B. Escudero, secretary. Said copies are correct as far as I know. Many of the originals I have seen. The acts of the justices in making measurements in particular to individual colonists on said grant do not appear in them. They ought to be with the archives of the grantees. The two justices who knew much about the matter are dead—Don Pablo Malendrez and José Ma. Castales. The former issued the titles. The land measured off included what I have before stated. There are now upon said grant holding under it over three thousand five hun-
320 dred inhabitants. The lands embraced in the limits of said Doña Ana grant are non-mineral. I have no interest whatever in said grant of Doña Ana.

GUADALUPE MIRANDA.

Sworn to and subscribed before me, this 29th day of December, A. D. 1873. Witness my hand and the seal of court, the day and year last named.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

(*Surveyor General's Decision.*)

Doña Ana Bend grant.

Opinion.

This claim for lands by the people of Dona Ana comes before me for examination under the eighth article of the treaty of Guadalupe

Hidalgo and the eighth section of the act of Congress of July 22, 1854, establishing this office.

The record shows the establishment of the colony by legal authority of the Republic of Mexico in 1839, and that the colonists and their heirs and legal representatives have ever since claimed or occupied the lands, and that they have never been disturbed in possession except by hostile Indians.

I believe the title to the lands is perfect in said claimants, and respectfully recommend that the same be confirmed to them, the said colonists and their legal representatives, according to the boundaries described in the testimony of Guadalupe Miranda.

I transmit triplicate copies of the entire record.

JAMES K. PROUDFIT,
United States Surveyor General.

United States surveyor general's office, Santa Fé, New Mexico, March 31, 1874.

(*Authentication of Transcript.*)

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *April* 4, 1874.

The foregoing is a correct transcript of the papers on file in this office in private land claim reported as No. 85, in the name of the colony of Doña Ana bend.

JAMES K. PROUDFIT,
United States Surveyor General.

321 DEFENDANTS' EXHIBIT MESILLA COLONY GRANT, REPORTED No. 86.

322 *Petition of Claimants.*

TERRITORY OF NEW MEXICO, }
County of Donna Ana. }

To the surveyor general of the Territory of New Mexico:

Your petitioners, the inhabitants of the civil colony of Mesilla, in the county of Donna Ana, would respectfully state that, on the 4th day of August, in the year 1853, one Guadalupe Miranda,
323 commissioner general for the transportation of Mexican families into national territory, in conformity to the laws and regulations of the government of Mexico, made a grant of land to certain Mexican families, known as the civil colony of Mesilla, then being a portion of the Republic of Mexico, but now being within the county of Donna Ana, in the Territory of New Mexico, which said grant was made in fee to the inhabitants of said colony, and was duly taken possession of by said grantees in accordance with the form of law then in force, and has ever since that time been in the quiet and peaceable possession of said grantees, their heirs and assigns, without any adverse claim of any kind from any source whatever.

Your petitioners further state that the towns of La Mesilla and El Picacho are situated on said grant, and the residence and farms of your petitioners, who have inherited the same from the original grantees or acquired them by purchase.

Your petitioners further state that they, your petitioners, number more than one thousand persons, all of whom live upon said grant, and hold the same either by purchase or inheritance from the original grantees. And your petitioners further state that they are unable to state the number of acres contained within the boundaries of said grant, as no survey of the same has ever been made, but the boundaries mentioned in said grant are well known and easily identified.

Wherefore your petitioners, the inhabitants of said civil colony or grant, with a view that these grants may be confirmed by the Congress of the United States, herewith present for your consideration a copy of said grant in the Spanish language, marked Exhibit A, together with a translation of the same; also contain rules or regulations, marked Exhibit B; also a printed copy of a decree of the Mexican government, marked Exhibit C; also a paper marked B B; also the sworn testimony of Guadalupe Miranda, Vicente Lucero, Martin Trujillo, and Eugeneo Moreno; they also refer to the diagram (copy appended) filed with the papers this day, in the grant known as the Doña Ana bend.

The inhabitants of the civil colony of Mesilla, by

JNO. D. BAIL,
Their Attorney.

(Here follows diagram marked p. 324.)

325 (Translations.)

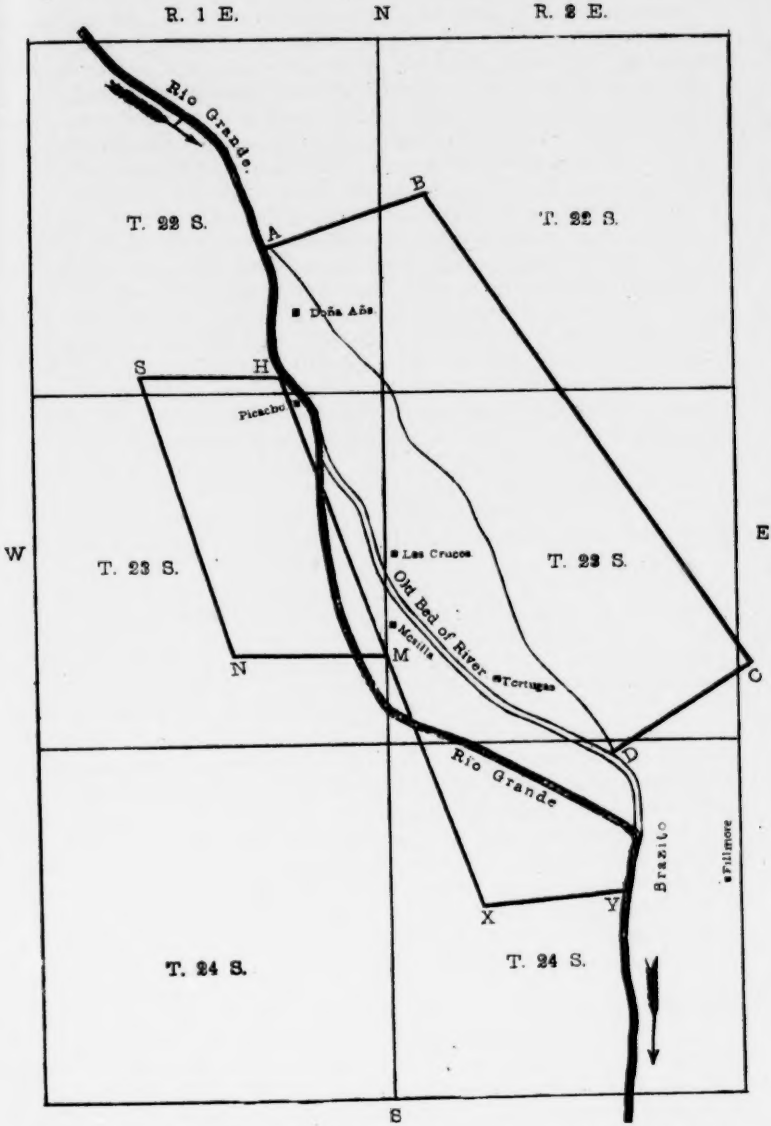
Claimants' Translation of Exhibit A.

Guadalupe Miranda, commissioner general for the transportation of Mexican families into national territories, in accordance with—

I certify that on this the fourth day of August, one thousand eight hundred and fifty-three, I arrived at the colony of La Mesilla, on the west margin of the River Bravo del Norte, (Rio Grande,) and by and in the name of the supreme of the nation and of the government of the State I have determined, assigned, and affixed the landmarks of their common as a new colony, to wit: Two leagues across the river bottom so as not to give the majority of it on the immediate bank of the river or the foothills five thousand varas, said area should contain, so as to make it square, and running north until it reaches the hills of the Pecacho mountain, and two leagues on the hills and mountains for grazing purposes, in conformity with article 2 of the ordinance of the 22d May, 1851, and by the circumstances caused by the numerous population this colony now has, the land herein granted will be proportioned to them to their advantage, and to be divided into two towns as soon as practicable; one where the town is now situated, and the other at the foot of the Pecacho mountain.

PRIVATE LAND-CLAIMS.

Copy, of Diagram referred to in the foregoing Petition.



The Sketch Shows the River as it ran up to 1865. Since then it has changed

no. 78
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Inasmuch as all the farming land is now in cultivation, that fact has caused me to grant so much farming land, being all that lies in the river bottom comprehended by the following boundaries, and the two leagues for grazing purposes, having established the line that divide- the colony of La Mesilla and that of Santo Tomas de Iturbide, on yesterday of the third (3d) day of the present month, in presence of the authorities of both colonies, viz: Don Domingo Cubero, Don José Manuel Sanchez Baca, and citizens of both colonies, to wit: Don Cesario Duran, Don Blas Duran, Don Francisco Roja, Don Balentin Maese, Don Mauricio Sanchez, and many others. The initial point (first landmark) was established (eastwardly) near an arm of the river about eight varas from a few cottonwood trees which are blazed, and near a small sand hill; from thence west on the south of La Mesilla, and north of Santo Tomas, (the boundary line having been run with a cord,) to the ruins of an old corral, known as "Las Guerras," which said line measured five thousand (5,000) varas up to the hills where a landmark was made; thence running north on the east, (this line also having been run with a cord,) following the foothills in a direct line towards Picacho mountain, on the same bank of the river to where it connects with the hills; from thence following the same direction to a small black mound, north of a small flat known as "Apache ford," and a short distance above Pecacho for the distance of nineteen thousand five hundred varas; returning and taking the first point (initial point) on the bank of the river where the line divides the colonies of Santo Tomas and this of La Mesilla, and from said small sand hill to the north on the east, following the bank of the river in a direct line in the direction of the Pecacho mountain, on the bank of said river, the same runs into the hills, and necessarily following its bank to the small black mound north of the aforesaid small flat known as the said "Apache ford," and measuring twenty thousand varas, with which said boundaries terminates the area of the said forming lands.

From this point, *i. e.*, the small black mound running toward the west, on the north, over the hills and mountains, measured five thousand varas, at the termination of said line, was estab-
326 lished by erecting a monument near the dividing line. From thence on the south on the west was measured ten thousand varas, which said line reached and run below the present site of the town of La Mesilla, at the termination of which a landmark was established on the plain; from thence to the east on the south was measured five thousand varas, which extended to the foothills, and touching upon the boundaries of the farming lands above mentioned.

The said grazing lands being granted in accordance with article four (4) of the aforementioned ordinances, having left the boundaries marked by small mounds of earth and blazed cottonwood trees, and requesting the authorities to erect of stone and cement the initial points of said boundaries, so that time would not efface the same, I do declare to the utility of the citizens of said colony of La Mesilla in common grazing, water, game, fishes, rock, trees, fruit, and other

clas-es of the products of the soil, so that none, except he be a citizen of said colony, can enjoy the privileges granted to those by law, and to those persons who in the future will identify themselves as such.

The citizens of said colony will enjoy the pasture grounds and other productions of unoccupied lands beyond the boundaries of this grant, together with the citizens of the immediate towns, until such time as the government shall dispose of the same as provided for in article 5 of said aforementioned ordinance.

Having established the boundaries as aforementioned, in the presence of the said authorities and citizens, I therefore certify to and sign this on the date aforesaid, on this common paper, as none of corresponding seal can be had, at the same time taking the required testimony necessary to guard the title to said colony.

G. M.

This is a copy taken from the original, with which it corresponds legally and faithfully.

In testimony for the guard of said colony I hereunto inscribe my name on this the 4th day of August, 1853.

GUADALUPE MIRANDA.

Fees for survey and testimony, $100.

TERRITORY OF NEW MEXICO, }
County of Donna Ana. }

The foregoing is a correct translation of the original grant, marked Exhibit A, filed herewith in the Spanish language, to the best of my knowledge and belief.

JNO. D. BAIL.

Sworn to and subscribed before me this 17th day of January, 1874. Witness my hand and the seal of court the day and year last aforesaid.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

[SEAL.] EXHIBIT B B. [SEAL.]

I, Citizen Luis Valdez, first judge of first instance of the Bravos district, State of Chihuahua, do certify that Cristoval Ascarate, a citizen of the United States, of the North, presented in my office an official document, the day of the date hereof, which to the letter is as follows:

327 "HEADQUARTERS OF CHIHUAHUA.

"Brigade Trias, general-in-chief, doth state to the curate of this village, the presbyter, Ramon Ortiz, the following:

"His excellency, the governor of the State, in a communication of the 11th instant, states to me as follows:

"The honorable the secretary of state, in his note of the 23d of March last, states to this government the following:

"'EXCELLENT SIR: I have communicated to his excellency the general, the depository of the supreme executive power, Your Excellency's note, number 4, of the first instant, in which you set forth the disorders caused by the conduct observed by Presbyter Ramon Ortiz, curate of the village of El Paso, and the necessity of removing him from the commission that had been conferred upon him to protect the emigration of families from New Mexico; and His Excellency being advised in the premises, as well also as of all other matters mentioned in said communication, has been pleased to empower, and he does hereby authorize, Your Excellency to appoint such person as you may deem most suitable, in lieu of the said presbyter, Ramon Ortiz, on said commission, and to inform this office thereof, to the end that it may take such steps as may be deemed expedient, in order not to defeat its object; and in order to prevent the evils and perils you lament in your said note, His Excellency trusts finally in the zeal and patriotism of Your Excellency to preserve, unalterably, good order, and the integrity of the national territory, as respects the State under your worthy command, and I transmit the same to Your Excellency, in order that you may be pleased to proceed at once to appoint the person who shall succeed Presbyter Ramon Ortiz on the commission referred to in the foregoing note; hence this government specially empowers Your Excellency to make such appointment, with the understanding that, under this date, there is forwarded to Mr. Ortis the proper communication, requiring him to render to the person Your Excellency may appoint the due account of the disbursements he may have made of the funds he has received for the purposes of the commission he has discharged. And I transcribe the same to you, informing you that, in the exercise of the supreme authority granted, and that of the authority to me granted, I have appointed Guadalupe Miranda to substitute you in appointment, which was conferred upon you, for the removal of families from New Mexico and the formation of civil colonies of the State, you being pleased to render to the said Mr. Miranda the corresponding account of the sums you may have received for the discharge of your commission, and I have the honor to insert the same for your information, hoping that you will be pleased to accept the honorable commission which I confer upon you, in consideration of the patriotism and philanthropic sentiments for which you are distinguished. You may, therefore, proceed to receive from the curate Presbyter Ramon Ortiz, the funds and all papers pertaining to the said appointment, which he held.'

"Tendering to you the assurances of my sincere esteem and high consideration.

"God and liberty, Paso del Norte, April 28, 1853.

"ANGEL TRIAS. [RUBRIC.]

"Hon. Guadalupe Miranda."

This is a copy taken literally from its original, which agrees faithfully and legally with the said official document which
328 was presented to me by the American citizen Cristoval Ascarat, taken on two pages of seal third, to which I certify, at the request of the party interested. I sign this in the village of El Paso del Norte, on the fifteenth of February, one thousand eight hundred and seventy-one, with those in attendance, to which I certify.

LUIS VALDEZ.

Attending: JESUS DÑO. MONTES.
Attending: HEMERESILDO PONCE.

[SEAL.]

Fees, without office paper, four dollars.

[RUBRIC.]

EXHIBIT A.

(*Official Translation.*)

I, Guadalupe Miranda, commissioner general for the removal of Mexican families to the national territory and the establishment of colonies, do certify that this fourth day of August, one thousand eight hundred and fifty-three, I proceeded to the Mesilla colony, on the right bank of the Rio Bravo del Norte, and in the name of the supreme powers of the nation and those of the state government, I have, for the commons of the same as a new colony, determined, designated, and placed landmarks to two leagues of agricultural land extended along the bend, as the five thousand varas which the area showed contain to square it cannot be obtained in the principal part thereof between the river and the drainings of the hills; and, ascending to the north, it narrows more until it joins the hills at the Picacho mountain, and two leagues on the mountains and plain for pasturing live stock, in accordance with article II of the regulations of the 22d of May, 1851; and in consideration of the large population this nascent colony has, and to give it more advantages and conveniences, the citizens are required and they are disposed to divide themselves into two communities as soon as possible, one of them wherever it may be selected, and the other at the Picacho mesa, as they have already under cultivation all the arable lands, a circumstance I have kept in view in granting them the extent of planting land the bend contains, which is embraced in the following measurements, and the two leagues for pasture land. Having designated yesterday, the third instant, the line that divides this colony of the Mesilla and that of Santo Tomas de Yturbide, in presence of the authorities of both, Domingo Cubero, José Manuel Sanches Baca, and the citizens and residents of both, Cesario Duran, Blas Duran, Francisco Rojas, Valentin Maese, Mauricio Sanchez, and many others, the first landmark was established on the east near an arm of the river, about eight varas distant, where there are some small marked cottonwood trees, and on a small sand hill; from thence west, south of the Mesilla and north of the Santo Tomas colony, the

line was run with the cordel to a hill in front of the ruins of a corral called the Guerras corral, making five thousand varas on the hill, and the landmark was established, continuing toward the north; on the west the measurement was made with the cordel on the slope or
329 drainings of the hills, in a direct line toward the Picacho hill on the river side, and where it touches the hills; thence continuing the measurement along the margin of the river, it reached the Peñasco Prieto hill, which is to the north of a small bend called the Apache ford, a little above the Picacho, making nineteen thousand five hundred varas. Returning to commence at the first point on the edge of the river of the colonies of Santo Tomas and this of the Mesilla was fixed where the dividing line on the north from the small sand hill; thence to the north on the east, following the bank of the river in a direct line, in the direction of the Picacho, on the margin of said river, where it touches the hills, and following the bank very close to the Peñasco Prieto which is situated to the north of the small bend called the Apache Ford bend, making twenty thousand varas, with which three measurements the area of the cultivable was determined. From this point of the Peñasco Prieto west, on the north over the hills, there were measured five thousand varas and a landmark was established on a hill near the dividing line; thence to the south on the west there were measured ten thousand varas, which reach below the present plaza of the Mesilla, the landmark was established in the plain; thence east on the south, five thousand varas were measured off, which reached to the drainings of the hills and intersected the line of the arable lands, and, in conformity with article IV of said regulation and the lines having been designated by mounds of earth and some marked trees, the authorities being directed to establish the extreme boundaries of the admeasurement by placing mounds of stone and mortar, to the end that lapse of time do not destroy them, and they may be always observed and respected as the metes and bounds of the commons. I declare the pastures, woods, water, game, fisheries, stone, fruit trees, and things the land produces to be for the common benefit of the residents (vecinos) of the Mesilla colony without any other, not a resident of said colony, having a right to enjoy the benefits granted to them by law, and to those who shall in future establish themselves there the residents of said colony, shall also have the benefit of the pastures, timber, and all other advantages of the vacant lands beyond the commons determined in common and together with the residents of the towns in the vicinity until the government shall determine to cede and alienate them, in which case they will abide by the conditions expressed in the grants as prescribed by article V of the aforesaid regulations, and having concluded said measurement in the presence of said judge and many other persons, and citizens who came and were present.

I certify and sign this on the day of the above date on this common paper, there being none of the corresponding stamp, taking the respective testimonio, which will serve as a title and security for said colony.

G. M.

This is a copy taken from its original, with which this testimonio agrees faithfully and legally, for the security of the said colony, this 4th day of August, 1853.

GUADALUPE MIRANDA.

Fees for measuring the land, original and testimonio, 100 dollars.

[RUBRIC.]

Filed for record, April 30, 1869, and recorded at folios 496, 497, 498, of Book of Deeds, No. 3, of records of Donna Ana county, New Mexico.

J. F. BENNETT, *Recorder*,
By R. H. BLAKE, *Deputy*.

330 EXHIBIT B.

Colonization Regulations Issued by the Supreme Government of the State of Chihuahua on the 22d of May, 1851.

Copy taken for the use of Daniel Trietze, Esquire, of Mesilla, N. M.

Regulations for the organization of civil colonies and all other settlements which may be formed in the State.

Article 1. The colonies shall retain this title until the honorable congress of the States shall declare them villages, cities, and so forth, according to their respective importance, and each one of them, as also all other new settlements, shall have the name given them by the commissioner, forming the same, appointed by the State government, and this commissioner will see that such name be Spanish, and be not confounded with those of other places, and shall not refer to living persons.

Art. 2. To each civil colony or new settlement the respective commissioner may grant one league for commons and pasture grounds, in conformity with the State law of October 22, 1833, in a square or extended form, according to the nature of the land and the position of the settlements in the vicinity, and on these boundaries there shall be placed landmarks, and the limits clearly defined designating plainly the four courses of the tract, and expressing in the proceedings of measurement all certain and permanent points which serve to recognize the courses with all exactness, for which purpose the four cardinal courses shall be followed, or, at least, the intermediate of these exactly should it be possible to do so.

Art. 3. Whenever there may be in the colonies or new settlements thirty male residents, over the age of twenty-one years, they shall elect, directly from among themselves, a justice of the peace, a council, composed of six members, a solicitor, and one mayordomo, in order that this council, under the supervision of the proper ayuntamient*a*, or municipal body, may manage the economical government of the colony, reporting to the prefecture of the district or the presidency of the municipality of the election, and through them the State government.

Art. 4. When the league of land to be ceded to the new settlement shall be designated and marked, its pastures, woods, waters, game, fisheries, stone, fruit trees, and other things produced shall be for the common benefit.

Art. 5. The residents shall also enjoy the timber, pastures, waters, and all other benefits arising from the public lands, there may be lying outside of the land designated to the new settlement, in common with the residents of the towns in the vicinity and contiguous, which favor and privileges shall continue only until the State shall grant and alienate the same, in which case they shall confine themselves to that which is prescribed in the grants made to the new occupants and proprietors.

Art. 6. The place which is considered most appropriate for the location of the new settlement being selected and designated, the commissioner shall see that in its establishment all the houses and other buildings which may successively be constructed, be in conformity with the site or plan first formed, in which he will see that the streets be at least twelve varas wide, that they be laid off with the cordel, and cross at right angles, which will facilitate the traffic and communication of the citizens and settlers, and contribute also to its uniformity and symmetry and beauty of the settlement,
331 and it will also serve for its better temperature, cleanliness, and health, to the benefit of those who may establish themselves there.

Art. 7. He will also see that in the center of the settlement there be a regular and well-proportioned plaza, in which shall be designated lots for the church and the curate's house, and for school and government buildings, and in convenient places other lots for a jail, barracks, stations, and so forth.

Art. 8. Having designated in the plan or site the ground that each block should occupy, and it not being possible to designate the lot sufficient for each resident settler by reason of the inequality there may exist among the families, the means and measures to be taken for the same, are left to the prudent judgment of the commissioner, the authority to concede to them the varas of ground for building lots, that according to their families, wealth, and other just considerations, he may deem necessary for one to work and improve for which purpose, and that all may have his proportionate share according to his means, he may divide among them, one-half, a fourth, or eighth, or an entire block which are the divisions most adequate to obtain the object of uniforming as far as possible the buildings of the settlement.

Art. 9. In order to prevent the complaints the voluntary assignment of lots might occasion, through preference or favor of some in respect to others, the assignment shall be executed among the first settlers by lot, as provided in law 11, title 7, Book 4, of the reco-pilation.

Art. 10. There shall be left in the circumference of the settlements a common competent for the recreation of the settlers, the exit of their stock without committing damage, and in proportion

as the same may increase in future there be sufficient land to grant them for building their houses and habitations as provided by law.

Art. 11. In like manner he shall proceed to designate and mark off the common or work-cattle meadow deemed to be sufficient for the abundant and convenient pasturage of work-cattle, and those that may be for the supply of the new settlement, endeavoring to select for this purpose lands with abundant pasture, not being of the better class for producing wheat and other grain produce, useful for the consumption and subsistence of the new settlers and their families, as provided by said laws 7 and 14, title 7, Book 4 of the reco-pilation.

Art. 42. Having concluded the setting apart of commons and the community meadows for work-cattle, the commissioner shall proceed to make a correct calculation of all the useful productive land which by means of the acequia constructed can be irrigated, and the balance not having this advantage considered proper for planting and grain-growing on the uplands, and by dividing one and the other into equal lots of two hundred and fifty varas on each side, will thereby be able to ascertain the number of lots of each class to be distributed among the new settlers and to those who may join and increase the same in future.

Art. 13. When the lots of the land most useful and nearest the town shall thus be divided, and which have the benefit of irrigation, there shall be designated and marked off eight, which shall remain applicable to the funds of the corporation, the products of which shall be administered by the mayordomo appointed by the council with the approval of the proper ayuntamiento or municipal body.

Art. 14. The first time the eight lots of the community lands shall be planted and cultivated by all, and for this purpose all the settlers and residents shall personally or with their peons work them with their oxen and cattle in an equitable manner as
332 directed by the commissioner, who shall distribute the work so that all will participate equally therein, without exception of any settler nor resident, with the understanding that this operation shall be limited to the first cultivation, planting, and gathering of crops, with the products of which the future working shall be paid; the net proceeds remaining to the funds of the corporation to be applied to public use as the law provides these funds shall be applied.

Art. 15. The eight lots of irrigable land having been assigned to the corporation of the new settlement, and designated by landmarks, the remainder there may be useful in the district, either subject to irrigation or upland, shall remain for the benefit of the settlers, to whom shall be assigned and granted as they shall establish themselves thereon; and, it being impossible to give a fixed rule for the same in order to divide, and grant the same to each settler, it is left to the prudent discretion of the commissioner the power to regulate and grant those he may deem sufficient for the support of the family of each one, keeping in view the respective laws and that of the State of April 11, 1850, the number of individuals composing each family, those among them that are able to work and labor, the

farming implements and other utensils each one may have to commence with, and finally his respective application, it being just that he who applies himself should be awarded with a greater number of lots than those who through indolence or want of application neglect to cultivate those assigned him, under which consideration the first distribution shall be made among the actual settlers, not to exceed three lots, which amount may be conceded to each one, leaving the remainder to be distributed to those who may successively join the new settlement. To the children of families when they marry shall pass to the class of citizens or to that of settlers, who by the industry and application observed by them in the cultivation of the first lots to them distributed are worthy of having an increase of others, which shall in no case exceed an equal number to that that may have been made to them in the first distribution.

Art. 16. It being very convenient for the settlers that the number of lots designated to them should be united and contiguous, one to the other, in order that in this mode they can better attend to their cultivation, without the annoyances occasioned by the distance from one piece of land to another, the commissioner will endeavor to bear in mind this consideration in order to give them as far as possible the benefit of the lands being adjoining, or at least at as convenient a distance as practicable between the lands assigned them; and in order to avoid complaints that might result on account of the better quality of land in respect to others, the same being divided in the form as directed, he shall endeavor to execute the first assignment by lot among the settlers according to and as is provided for that of lots in article nine of this instruction.

Art. 17. The commissioner under whose charge the new settlement might be and the distribution of lands and lots, shall form a book or pamphlet in which the original proceedings of distribution shall be recorded, which shall be preserved among the archives of the ayuntamiento, or respective municipal body, and in conformity therewith he shall give to each settler a testimonio or certificate of his distributive share, expressing clearly and distinctly the quantity and limits of building lots, and pieces of land which they shall assign him, which document shall serve him, his children, and descendants, as a title of possession of the same, advising them that for this purpose they should preserve it, and if they should
333 by any involuntary accident lose it, they may apply to the commissioner or the ayuntamiento or municipal body — another according to the proceeding; for this purpose they shall remain in the archives.

Art. 18. As well in the original proceedings of distribution as in the documents of title of preference that shall be given to the settlers, the commissioner shall set forth that the lots and lands distributed and granted them in the name of the State is in fee-simple forever for himself, his children and descendants, with the express condition that they shall keep arms and horses and be ready to defend the country against the insults of the enemies that may attack it, and march against them whenever commanded to do so; that they shall cultivate the soil and keep their houses and live with their

families in the new settlement for the term of four years at least; that during this time they shall not alienate, hypothecate, nor place any incumbrances on the land and lots that may have been assigned them, although it should be done for charitable purposes; that within the precise term of two years they shall have cultivated and worked the lands that may have been granted them, and at least shall have commenced building the houses on the lots assigned them. These conditions having been complied with, and having resided for four years in their houses with their families in the new settlements, they shall acquire true dominion of the lands and lots assigned them, and of the houses and buildings that they may have constructed thereon, and from that time forward shall have power to sell and use them at their free will as their own individual property as provided by law 1, title 12, Book 4 of the recompilation and that of the State of May 1, 1851, it being understood that in no case shall they have the power to sell or alienate them to a church, monastery, an ecclesiastical person, community, nor to others called mortmain, as provided by law 10 of the same title and book, under the penalty to the person violating the same of forfeiting the land and buildings, and in such case they may be divided out among others; and finally, that at the end of three months after the grant and distribution shall have been made, it shall be their duty to take possession of the lots and lands assigned them and designate all the metes and bounds thereof, set out fruit trees or others that may be useful for the supply of the settlement, whereby the district will enjoy a good and healthy condition, and that they may avail themselves of the fruit, wood, and timber, produced for domestic uses and for agricultural implements, that they indispensably need, as provided by law 11 of said title and book.

Art. 19. The advantage of irrigation being the principal means of fertilizing the lands and most conducive to the progress of the settlement, the commissioner shall take particular care in the distribution of the waters, so that all the irrigable land may participate therein, in order to secure crops; for which purpose, availing themselves of skillful and able men to divide the territory in sections or possessions, designating to each one an acequia to be taken out from the principal acequia, to contain the quantity of water that may be deemed sufficient for irrigation, and during the remainder of the year they require it, by which means each settler will know the acequia with which he should irrigate his lands, and he cannot nor shall he have the privilege of taking the water of another district nor in greater quantity than his acequia will hold, for which purpose, and that of preventing the increase in prejudice to the owners of land above or below, the distributor of water shall construct in the acequia madre flood-gates of lime and stone, at the expense of the said settlers, through which the proper quantity of water can pass.

Art. 20. In order that these may enjoy with equity and
334 justice the benefit of the waters in proportion to the lands they have respectively planted, the municipal body shall appoint, annually, an overseer of irrigation, whose duty it shall be to

distribute among the owners of land embraced within the district, or lands to be irrigated therewith, in proportion to the necessity they have for this benefit, designating by list which he shall make, the hours of the day or night that each owner shall irrigate his fields.

Art. 21. The repairs and cleaning that the acequia may require for its preservation shall be done at the cost of the vicinage, at such times as the commissioner and ayuntamiento may fix, each resident assisting with his presence and personal labor therein, or in default thereof, with the sum which by an equitable division or *pro rata* he shall determine to be paid and satisfied by peons, and as respects the repairs and cleaning by the distributors and acequias designed for irrigating the districts or sections, into which the lands shall be divided, shall be under the charge of the farmers or owners whose lands and possessions are irrigated by them, among whom the cost incurred shall be divided by *pro rata* according to the number of the lots of land each one may possess at that place or possession, it pertaining to the municipal body with the advice of the commissioner to determine the time which without prejudice to the fields said repairs and cleaning may be done.

Art. 22. To prevent the damages and injuries that, through neglect of the owner, horned cattle, sheep, and goats may do to the fields, the council shall appoint, annually, two field guards, one to discharge his duties by day, and the other by night, and, as public officers, they shall take an oath as such before the justice to well and faithfully discharge the duties of their office, whose acts shall be accredited, unless there be produced against them sufficient proof to establish the contrary, and both shall be obliged to watch day and night and see that stock do not cause any damages to the fields of the vicinage and take those they may find doing so, which they shall drive to the corral that shall be made for this purpose, and called the council's corral, and report and give notice thereof immediately to the justice, to the end that under their affidavit he may proceed summarily and executively to examine and assess the damages they may have caused, and compel the owner of the stock so taken to pay and satisfy the owner of the fields who has been injured.

Art. 23. When the colony or new settlement shall have a sufficient number of inhabitants to entitle it to its own ayuntamiento or municipal body, they shall adopt their municipal ordinances and receive their archives with a correct inventory, for which purpose they shall be kept from the beginning separate and with the greatest clearness, the documents pertaining to them, in the archives of the ayuntamiento or municipal body to which they belong.

Art. 25. Although the land granted should appear limited by law for common pasture ground for the work-cattle of the new settlement, it should be observed that new settlers may acquire beyond them other private lands according to said laws and others of the State, and it is more important to the State the multiplication of towns of sufficient vicinage and fitness for progress than the assemblage of many settlers in one place. Therefore, if many should as-

semble in one colony or new settlement, that respective commissioner will consult with the State government as to the propriety of dividing them into several settlements, for which designation, settlement, and formation, in addition to the rules expressed, there shall be observed those of the State law of November 18, 1833.

335 Therefore, it is ordered to be printed, published, circulated, and obeyed in all its parts.

Government house of the State of Chihuahua, May 22, 1851.

JUAN N. DE URQUIDE, *Governor.*

AMADO DE LA VEGA, *First Officer.*

I omitted article 24, but it only directs that the commissioner's book of record shall be rubricked on the first and last pages by the secretary of the State government. This was done through a slight oversight and being in a hurry.

Los Amoles, El Refugio, La Union, April, Sunday, 16, 1871.

(The Press, Chihuahua, May 24, 1851.)

New Settlements.

The curate of El Paso, Ramon Ortiz, commissioner of the general State government, to aid the emigration from New Mexico, has come to this city to regulate with the State government some points of the greatest interest for the discharge of the duties of his commission, and in consequence also, of other arrangements, there have been issued regulations for the civil colonies and new settlements, which we publish in this number; our readers will see that at the point situated at the place expressed in the act, (which we also publish today,) and the village of El Paso, are formed and are being formed the important settlements called, up to this time, by the name of the Mesilla and Los Amoles and El Paso, the Real, Senecu, Yesleta, Soccorro, and San Elceario, there nave also been formed the settlements of the military colony of San Joaquin and the civil ones of Guadalupe and San Ygnacio, &c.

REPUBLIC OF MEXICO,
Political Prefect's Office of the Bravos District.

Be it remembered that, on the 24th day of April, in the year of our Lord one thousand eight hundred and fifty-one, the commissioners and surveyors on the part of Mexico and the United States, to establish the dividing line between both Republics, in conformity with the treaty of peace, signed in the city of Guadalupe Hidalgo, on the 2d day of February, 1848, and exchanged in that of Queretaro, on the 30th of May of the same year, fully satisfied with the observations made and the results obtained by the chief astronomer of both commissions, fixed this point on the right bank of the Rio Bravo or Grande del Norte, at (32, 22) thirty-two degrees, twenty-two minutes of north latitude, which, in accordance with the provisions of article V of said treaty, is "the point at which said river (Bravo or Grande del Norte) intersects the southern line of New

Mexico," it being understood that the distance from this point from which the river now runs, in the direction of the same parallel, is (219^{m}.4) two hundred and nineteen and four-tenth meters, consequently to the east of said point. For the greater solemnity of this act, there were present as witnesses, on the part of Mexico, Juan José Sanchez, political chief of the Bravos district of the State of Chihuahua, as the chief authority of this place, and on behalf of the United States, Brevet Captain Abraham Buford, commander of Company H of the First Dragoons of the United States Army, and Colonel Charles F. Tappin, aid-de-camp to His Excellency James S. Calhoun, governor of the Territory of New Mexico.

336 Given in duplicate in Spanish and English, and sealed at the place designated, &c.

It is a copy of the testimonio transmitted to this prefecture.

Paso, May 1, 1851.

JUAN MARIA PONCE DE LEON.

FAUSTIN MONTES, *Secretary.*

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *February* 10, 1874.

The foregoing, marked, respectively, Exhibit B B, Exhibit A, official translation, and Exhibit B, are correct translations of their originals in Spanish, on file in this office among the papers in the private land-claim in the name of the Mesilla colony.

DAV. J. MILLER, *Translator.*

EXHIBIT C.

DEPARTMENT OF HOME AND FOREIGN RELATIONS.

His Excellency the President of the Republic has addressed the following decree to me:

José Joaquin de Herrera, general of division and constitutional president of the United Mexican States, to all the inhabitants of the Republic: Know ye, that in exercise of the power conferred on me by the 2d section of article 110 of the constitution, in order to carry out article 22d of the law of the 14th June last, which created a fund for the transportation of such Mexican families as might desire to emigrate from the territory lost by the treaty of peace of Guadalupe Hidalgo, after having consulted with various persons acquainted with the local circumstances attending the territory referred to, and having heard the report of a commission appointed with this sole object, I have, in accordance with its recommendations, determined to decree as follows:

Article 1. All those Mexicans who, at the conclusion of peace, were in the territory which, by the treaty of Guadalupe Hidalgo, remained in possession of the United States of the North, and who may desire to locate upon that of the Republic, shall be conveyed to the latter at the public expense and in the manner prescribed in the following articles.

Art. 2. All persons who may be in the case mentioned will notify the consul or agent of the Republic that may be nearest at hand, or the commissioner or the agents of the commissioner that may be appointed, setting forth their names, ages, residences, and occupations, and if they have families the number of persons composing the same, with the same particulars in regard to each individual thereof.

Art. 3. The government will appoint three individuals to proceed as commissioners, one to New Mexico, another to Upper California, and another to Matamoras, in the State of Tamaulipas, charged with the transportation of the Mexican families mentioned in article 1.

Art. 4. These commissioners, in view of the petitions they may receive, direct or through the consuls, and in view of other proceedings, all of which they shall execute with the utmost expedition, shall determine the route of the families desiring to emigrate, and shall have charge of their transportation to the point of destination.

337 Art. 5. The families from New Mexico will proceed to Chihuahua, those from the left side of the Bravo to the State of Tamaulipas, Coahuila, or Nuevo Leon, and those from Upper California to Lower California or the State of Sonora, to which end the respective commissioners will have an understanding with the governors of these States and with the principal local authority of California, so that they may designate the land to be set apart for the establishment of colonies.

Art. 6. Those Mexicans who may emigrate under this decree shall enjoy the right of preference to claim all the privileges that the laws establish or may establish in favor of foreign colonists, beside the benefits herein specially extended to them. They shall also be received as a privileged class in the military colonies established by the law of the 20th of July last.

Art. 7. The governors of the States of Chihuahua, Coahuila, Nuevo Leon, Tamaulipas, and Sonora, and the principal political authority of Lower California, will make regulations, in so far as to them may belong, for the organization of the civil colonies to be founded by the emigrants, and will prescribe such measures as they may deem calculated to further, as much as possible, the enterprise, principally procuring by arrangement with the land-holders or by any other means whereby the emigrants may, within the States mentioned, obtain arable land as well as pastoral, whereon the owners of live stock may come and settle with their property.

Art. 8. Those emigrants who may not desire to devote themselves to agriculture, but to follow their profession or trade in any of the settlements, will notify the commissioner, and he the proper governor or authority thereof, so that he may inform them of the settlement to which they shall proceed and may be enabled to facilitate their location.

Art. 9. Each emigrant is free to make the journey at his own expense, in company, however, with the balance, and to reserve the whole or a portion of his quota in order that he may receive the same in farming necessaries and seeds at the place of establishing

the colony. He shall, nevertheless, be bound to notify the commissioner of the fact at the time of his enrollment in order that it may be considered when making the estimate.

Art. 10. The quota of the apportionment for the emigrants shall be twenty-five dollars each person of fourteen years of age and upwards, and twelve dollars for each person who shall not have reached that age. This sum will be received by the head of the family: I. In the amount corresponding to him and charged for transportation to the place where the colony may be established. II. In the oxen and implements delivered to him at said place. III. In seeds for his support during the first year of settlement.

Art. 11. If, on account of the distance of the place, the expenses of the journey be so considerable that they will not allow of at least the value of fifteen dollars being received in seeds and implements by each person above fourteen years of age, this sum will be completed to those individuals who go to settle in the colonies and none others.

Art. 12. Those who may not desire to settle in the colonies will receive one-half the quota prescribed in the terms agreed upon with the respective commissioners, who, should the parties not make the journey according as agreed, will not deliver to them the quota, unless satisfied that they have actually removed to the territory of the Republic.

Art. 13. The commissioners, as well as the governors of the States, will take such measures as to them may seem best to satisfy
338 themselves that the emigrants are such as contemplated by article 1 of this decree, and to prevent any of them from going now from the Mexican to the ceded territory, with the intention of enjoying thereafter the benefits of this decree, from which they shall be debarred as soon as the fraud is discovered. They shall also take care that criminals subject to trial or convicted of grave offenses do not come into the colonies.

Art. 14. The commissioners will issue to each person or family of those going to emigrate a ticket for the amount of the sum of quotas of the members, specifying in their ticket whether the expenses of the journey are borne by the party, or whether received from the commissioner, and whether they go with the intention of forming a colony, or the object of following some profession, or go to any other section of the Republic; and they will keep a minute account of the number, value, and contents of the tickets issued, to form from them the estimate of freight, provision, oxen, seed, and implements.

Art. 15. The said estimates being made, the commissioners, on their own responsibility, will themselves, or through their respective agents, make contracts, observing the utmost economy possible, for the means of transportation, provisions necessary for consumption during the journey, and for seed and implements, to be delivered to them at the place of their destination. These contracts will be executed in duplicate, one of which shall remain on file in the Mexican consulate.

Art. 16. The expenses of freighting seeds and implements, driving oxen, and generally all those expenses that cannot be calculated

with exactness before the distribution, will be charged in account under its proper head, in order that these expenses may be charged to the emigrant at prime cost. Also, a memorandum in detail will be furnished the commissioners, as expenses of the enterprise, such extraordinary expenditures as they may have to make, and which it may not be possible to estimate for at the proper time, so that they may be charged in the general account.

Art. 17. For the punctual payment of the contracts the treasury department will deposit the different funds at such places as in its judgment may be proper, and in the most proper mode to insure that those funds will not be diverted from their object; and the officers or the persons designated will pay at three days' sight the drafts drawn by the commissioner; will keep an account of the distribution, and at the conclusion will sign the general account of the commissioner. The drafts must bear the approval of the Mexican consuls or vice-consuls, so soon as they are established at these points.

Art. 18. According as the emigrant may from time to time receive what he requires, he will be charged therewith on his ticket, until the sum called for therein is supplied, when he will sign a receipt and deliver the same to the commissioner for the settlement of the account of the latter. In the liquidation and signing of the receipt, the authority designated by the governor of the State into whose territory the emigrant shall have come will supervise in the premises.

Art. 19. The general account of the commissioners will be presented to the national government with the entries authorized by law, supported by the respective tickets of the emigrants' vouchers, and bearing the approval of the governors of the respective States, and when allowed, the same will be published in the newspapers. In Lower California, the first civil authority will act for the governor.

Art. 20. The commissioners for New Mexico and California will each receive two thousand dollars for the expenses of the journey, whatever be the period their commission may continue; and,
339 further, one dollar for every man more than fourteen years of age that may emigrate, and fifty cents for other persons. The commissioner to Matamoras will receive one thousand dollars for expenses of the journey, and at the same rate for individuals as prescribed for the others. The commissioners will enter into such bond as the treasury department shall deem proper.

Art. 21. If the sum designated for the transportation should not be sufficient for the conveyance of all the families enrolled, the commissioners will immediately prepare the proper estimate and transmit the same to the national government, so that provision may be made at once to convey such families as could not come with the means now provided for the purpose.

Art. 22. Any doubts the commissioners may encounter in the discharge of their commission may be obviated by them by giving information thereof to and having an agreement with the governors of the respective States, or the first civil authority of the territory

of Lower California, should they arise in that territory; reporting, nevertheless, the state of their labors to the national government and to the governors of the respective States, with the greatest possible frequency.

Art. 23. The military and employés now in the ceded territory, and who during the war may not have forfeited their positions by infractions of the laws of the Republic, and who may desire to emigrate, will receive, besides the quota established herein, such sums as, on account of their salaries, the proper department may think proper to allow them, and those sums will be charged against the ordinary fund out of which said salaries are to be paid. The commissioners and governors will report their applications.

Art. 24. As well the agents of the general government as the authorities and functionaries of the States, will afford to the commissioners their protection, in order that these may meet with the best success in the discharge of their commission.

I do, therefore, order that this be printed, published, and circulated, and receive due compliance.

Palace of the general government at Mexico, 19th August, 1848.

JOSÉ JOAQUIN DE HERRERA.

To Don Mariano Otero.

And I communicate the same to you for your information and the proper purposes.

God and liberty.

Mexico, August 19th, 1848.

OTERO.

To the commissioner to the Territory of New Mexico, cura of El Paso, Ramon Ortiz, State of Chihuahua.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *February* 10, 1874.

The foregoing is a correct translation of the original printed paper, in Spanish, marked Exhibit C, on file in this office, appended to the deposition of Guadalupe Miranda, of December 29, 1873.

DAV. J. MILLER, *Translator.*

340 *Testimony of Witnesses.*

VICENTE LUCERO, being first duly sworn, testifies os follows:

I live in La Mesilla, county of Donna Ana, Territory of New Mexico. I am well acquainted with Guadalupe Miranda. He lived in El Paso in the summer of 1853. He was at that time commissioner of immigration under authority from the general government of Republic of Mexico and State of Chihuahua. He was commissioner of immigration, and as such commissioner under the laws of the general government of Mexico and the State of Chihuahua, he had power and authority to establish colonies and to make to them grants of lands. I know he was commissioner, because I have seen

the authority appointing him the successor of Cura Ramon Ortiz, as commissioner, and he acted in the capacity of commissioner, and was recognized as a legal commissioner for the purpose of establishing colonies and granting lands to them in the places where established. He acted as such publicly. I know the place called the civil colony of Mesilla, or the Mesilla grant. It is situated on the west bank of the old bed of the Rio Grande, where the River Rio Grande ran when this grant of lands was made. The northern limit of the said grant of lands is at a place known as Apache ford and along a line running thence west to a black hill near and above the town of the Picacho, thence running southerly along the hills bordering the western valley of the Rio Grande nineteen thousand varas to a monument, thence easterly to said old bed of the Rio Grande. The town of Mesilla is about one thousand four hundred varas southwardly from said Apache ford and black hill. Said grant lands embraced in the present limits of the county of Donna Ana and within that portion of the United States known as the Gadsden purchase.

On the 4th day of August, 1853, said Guadalupe Miranda, as commissioner aforesaid, and in accordance with laws aforesaid, made to said colony of La Mesilla a grant of lands as above described under the emigration laws and regulations of Mexico. The people of the colony aforesaid immediately entered into possession under said grant, as many of them were already upon the lands, and have ever since continued in possession of said lands by virtue of said grant to them. There were about one thousand five hundred persons in the colony aforesaid.

This paper (grant paper here shown witness) is the document given to the Mesilla colony, and in which the lands described are the lands granted, and same as I have been testifying about. I know signature of Guadalupe Miranda. The signature affixed to this document is genuine. This grant has always been respected by the authorities of Republic of Mexico and State of Chihuahua as a genuine and legitimate grant of lands under the laws thereof, and the said grantees and their heirs and assigns have always since the date of said grant been considered and respected as the legitimate owners and holders of said lands, and as such been respected by every one. The lands above described are non-mineral—are exclusively agricultural and pastoral lands.

At present the number of persons occupying said grant and holding under same is about fifteen hundred. There are two towns on said grant, namely, Mesilla and Picacho. I have no interest in said grant whatever.

VICENTE LUCERO.

Sworn to and subscribed before me this 22d day of December, 1873.

Witness my hand and the seal of court the day and year last named.

[SEAL.] DANIEL FRIETZE,

Probate Clerk of Donna Ana County, New Mexico.

341 EUGENIO MORENO, being first duly sworn, testifies as follows:

I live in the town of La Mesa, in the county of Donna Ana, Territory of New Mexico. I am forty-three years old. I know Gaudalupe Miranda. I knew him in the summer of 1853. At that time he was living at El Paso, in the State of Chihuahua, Republic of Mexico. He was at that time commissioner of immigration under authority from the general government of Mexico. I know this because I was at El Paso when the order came appointing Guadalupe Miranda as successor of Cura Ramon Ortiz, and saw him turn over the said office of commissioner to said Gaudalupe Miranda, who immediately entered upon his duties as such commissioner. He had authority by virtue of his commission to establish colonies of immigrants under the laws and regulations of the Republic of Mexico, and the State of Chihuahua, in said Republic, and under same to make grants of lands to them—the colonies—in the places where established. Said Guadalupe acted as commissioner aforesaid publicly, and he was always recognized up to date of the Gadsden purchase as a legally appointed commissioner by the Republic of Mexico, and his acts as such recognized as legal and binding. As commissioner aforesaid, in the summer of 1853 he established the colony known as the colony of Mesilla, which was a civil colony established under the laws of Mexico as aforesaid, and made a grant of lands to said colony. I was one of the parties named to assist in measuring the boundaries of the grant of land. I assisted, and accompanied the party measuring the Mesilla grant while the eastern boundary was fixed; this was the Rio Grande river, or where the said river ran at that time. The old river bed now is the eastern boundary of said grant, commencing at what is known as Apache ford, above the town of Picacho, and thence running down said river bed (old river bed) to a point above the town of Santo Tomas; thence westwardly to the top of the hills on west bank of the Rio Grande, and thence northwardly along said hills to a hill known as "Cerro prito," and thence eastwardly to the place of beginning. Said described tract of land lies in the present limits of Donna Ana county, Territory of New Mexico, and in that portion of the United States known as the Gadsden purchase. The people of said colony immediately entered upon said lands, and into possession thereof, and have continually been in possession thereof ever since. There were about one thousand persons, perhaps more, of the colony who so entered upon said lands.

This paper. (The grant known as Mesilla Grant papers here shown witness.) I know this paper. It is the grant given by Gaudalupe Miranda to the Mesilla colony. The boundaries of the grant are same as given in this paper. I have seen a duplicate of this same paper in the archives of the colony of Mesilla. I know the signature of Guadalupe Miranda. The signature to this paper is his signature. This grant has always been respected by authorities of Mexico and Chihuahua as a legal grant, and the grantees, their heirs and assigns, have always, since the date of said grant, been respected and considered as the legal owners and holders of said

lands, by virtue of said grant, and as such been respected by every one. At present there are about fifteen hundred people occupying said grant by virtue of same. I have no interest in said grant—none whatever. The lands are non-mineral; are exclusively agricultural and pastoral.

EUGENIO MORENO.

Sworn to and subscribed before me this 22d day of December, 1873.

Witness my hand and the seal of court the day and year last named.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

342 MARTIN TRUPILLO, being first duly sworn, testifies as follows:

I live in La Mesilla, and am forty-five years of age; I know Guadalupe Miranda, who lived in El Paso in the year 1853, and was sometimes in Dona Ana, in this county, (county of Donna Ana.) During the year 1853 he was commissioner of immigration from New Mexico to Chihuahua for the purpose of regulating and establishing colonies of Mexicans who should move from New Mexico to the State of Chihuahua. He was the successor of Cura Ramon Ortiz, and succeeded him in all his duties. He was commissioner for the purpose of establishing colonies of immigrants and to make to them grants of lands. He was appointed such commissioner by the authority of the Mexican government. His appointment came from the governor of the State of Chihuahua, Republic of Mexico. I know that he held said commissions, because I saw them, and he discharged the duties as such commissioner publicly, under the laws and authority of the Republic of Mexico. Said Guadalupe Miranda, as commissioner aforesaid, had authority to establish colonies of emigrants, and to make such colonies grants of lands in the places said colonies might occupy. I know the place called the "civil colony of La Mesilla." It is situated on the west bank of what is now known as the "old river," (but at the time the grant was made the Rio Grande ran in this old river bed,) and extends along said river on its west bank from a point known as Apache ford, near the town of Picacho, and including said town, and from a black hill along the range of hills to a monument, nineteen thousand varas, which is the southern boundary or limits of said grant. The town of Mesilla is in said grant, and is about fourteen hundred varas from the northern boundary of said "civil colony." Said colony is in the present limits of the county of Donna Ana, and within that portion of the United States known as the "Gadsden purchase."

Guadalupe Miranda, on the 4th day of August, 1853, by direction of the governor of Chihuahua, and in accordance with laws aforesaid, made to said colony of La Mesilla a grant of lands as above described under said emigration laws and regulations. The colony aforesaid at once entered into the possession of said described lands

above granted. There were over three hundred laborers who entered into possession, and have continued in possession of said grant and of said lands until this present time. There were about three hundred heads of families on said lands.

(The grant papers here shown witness.)

What is this paper?

It is the grant known as the civil colony of La Mesilla. The signature is the genuine signature of Guadalupe Miranda. This said grant has always been respected by the authorities of the government of Mexico and the State of Chihuahua, up to the date of the Gadsden-purchase treaty, as a legal grant of land under the laws of Mexico and Chihuahua, and the said grantees and their heirs and assigns have always, since date of said grant, been considered and respected as the legitimate owners and holders of said lands, and as such have been respected by every one. The boundaries are such as described in the grant itself, that is, in the paper shown me. The lands embraced in said grant are non-mineral. They are agricultural and pastoral lands.

I have no interest whatever in the grant aforesaid. At present there is a population of about fifteen hundred persons on said grant. There are two towns on the same, to wit: La Mesilla, which is the county-seat of Donna Ana county, and Picacho.

MARTIN TRUPILLO.

343 Sworn to and subscribed before me, this 22d day of December, 1873.

Witness my hand and the seal of court the day and year last named.

[SEAL.] DANIEL FRIETZE,

Probate Clerk of Donna Ana County, New Mexico.

GUADALUPE MIRANDA, being first duly sworn, testifies as follows: I live in El Paso, Mexico, and I am sixty-three years of age. In the year 1853 I was commissioner of emigration under the general laws of the government of the Republic of Mexico. (A printed copy of a decree marked C, of the government of Mexico, with rules marked B, prescribed by government of the State of Chihuahua, in the Spanish language, here shown witness—said printed copy hereto attached.) I was commissioner under this law and these regulations, (referring to the printed decree in Spanish hereto appended,) at the time above stated. In August, 1853, (the early part of August,) as commissioner above stated, and in virtue of the law and regulations cited, I made a grant of lands to the colony known as the civil colony of La Mesilla. (The official copy of the grant marked A, and attached hereto, here shown witness.) This (taking said copy in witness's hand and examining it) is the official copy of the grant made by me, as above stated, to the civil colony of Mesilla. This is my signature signed to said document. The original or duplicate of this is with the archives of the grant. I signed them both. One is kept with the archives, as stated, and the other one—this one—is for the grantees of the colony. The bound-

aries of the grant are as contained in this document. The lands embraced in the limits of this grant to the colony known as the civil colony of Mesilla, are situate in the present limits of the county of Donna Ana, and in that portion of the territory of the United States known as and acquired by the "Gadsden purchase." At the time this grant was made said lands were within the limits of the State of Chihuahua, Republic of Mexico. At the time this grant was made to said colony the grantees immediately entered into possession of said grant of lands, and have continued in possession of same without any molestation from any one ever since. Said grantees and their heirs have been always, since said grant was made, recognized as the legal owners and holders of said grant of lands, and have been so recognized and acknowledged by every one. My acts as commissioner aforesaid were approved by the general government of Republic of Mexico, also by the officials of the State of Chihuahua, and have been recognized as legal and binding by every one. The original grantees who entered into possession as above stated numbered not less than three hundred heads of families, and about one thousand five hundred souls. There are about that number now upon said grant holding under it. The lands of this said grant known as the civil colony of Mesilla, are non-mineral. I have no interest in the said grant. The copy of decree hereto annexed, and in the Spanish language, and above stated as the authority under which I made the grant before mentioned, is a true copy of the original decree of the government of the Republic of Mexico, officially signed by José Joaquin de Herrera, president of the Mexican Republic, and attested by Mariano Otero, secretary of state of said Republic. (Here the copy official in Spanish, and entitled "Reglamento para la organizacion de las colonias civiles y de mas poblaciones que se formen en el estado," and marked Exhibit B, shown witness.) This is a copy of the official rules which I had in my possession for my government, and which were prescribed under the decree before mentioned by the govern-
344 ment of the State of Chihuahua. (Said reglamento referred to by witness hereto attached.) These rules were complied with in reference to the said grant to the colony of Mesilla.

GUADALUPE MIRANDA.

Sworn to and subscribed before me this 29th day of December, 1873.

Witness my hand and the seal of court the day and year last named.

[SEAL.] DANIEL FRIETZE,
Probate Clerk of Donna Ana County, New Mexico.

Decision

Opinion of surveyor general.

This claim for lands is brought before me for examination and report under the act of Congress of July 22, 1854, establishing this office. It is the first case of a claim for lands, brought before this

office for approval, which lies within the region acquired under the Gads-en treaty of December 30, 1853.

By letter of February 17, 1872, from Hon. C. Delano, Secretary of the Interior, to Hon. Willis Drummond, Commissioner of the General Land Office, copy of which letter was furnished to this office by the honorable Commissioner, February 23, 1872, it was decided that this office possessed the same powers, under the acts of Congress of July 22, 1854, and August 4, 1854, in relation to lands within the Gadsden purchase, in the Territory of New Mexico, that it possesses as to lands acquired under the treaty of Guadalupe Hidalgo.

It appears from the record that, on the 4th day of August, 1853, Guadalupe Miranda, commissioner for that purpose, authorized by the government of Mexico and the State of Chihuahua, within whose limits the land was situated, granted the lands here claimed to a large body of colonists, numbering in all one thousand souls or more. The people have since remained in undisputed possession, improving and cultivating the same, and behaving as becomes good citizens, and it is believed that they would not have been disturbed in title or possession, by the authorities of Mexico or Chihuahua, had the territory not been transferred to the United States.

I therefore respectfully recommend that the title to the lands claimed be confirmed by Congress to the inhabitants of the Mesilla civil colony and their legal representatives according to the boundaries set forth in the grant papers executed by Guadalupe Miranda, commissioner, dated August 4, 1854.

I transmit copies of the complete record in triplicate.

JAMES K. PROUDFIT,
United States Surveyor General.

United States surveyor general's gffice, Santa Fé, N. M., February 12, 1874.

Authentication of Transcript.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *May* 22, 1874.

The foregoing is a correct transcript of the papers on file in this office in private land claim reported as No. 86, in the name of the colony of Mesilla.

JAMES K. PROUDFIT,
United States Surveyor General.

345 EXHIBIT OF PLAINTIFFS.

Testimonio of the Proceedings Carried on on a Land Grant at "Sierra Blanca," on the Left Side of the Rio Bravo del Norte, to the Resident Don Jose Lerma in 1823.

Petition.

To the very enlightened town council (ayuntamiento) of this town:

Don Jose Lerma, a native of Presidio del Norte and residing in this town, in due form of law would appear before your honorable

body and say that in consequence of and conforming myself to the colonization law issued on the 3rd of January of this year by the national constitutional assembly of this Empire, which gives preference to the natives of the country for land grants, I request that your honorable body be pleased to appoint a commissioner from your body to proceed to the place opposite the "sierra" (ridge of hills or mountains) called "La Sierra de todos Santos," or be it opposite the "Ojo de Toro" (Ball spring), on the left bank of the Rio Bravo del Norte, and to grant me the unimproved lands there existing for cultivation in the bends (ancones) of the same river, stock-raising on the adjoining "sierras," which I also claim to become my property as far as the "Sierra Blanca," lying east of said river, with all the watering places and minerals therein contained and the pasturages and other things included within said lands and "sierras" from opposite the said place of "El Ojo del Toro," on the left bank of said river, to the said "Sierra Blanca," establishing the boundaries which I ought to recognize if I be granted the favor which I solicit. I humbly pray that your honorable body may deem proper to accede to my petition in the name of the nation, inasmuch as I apply for this grant to settle those lands with other families who may wish to accompany me, opening fields of all kinds of grain, and also raising stock.

I swear that I do not act from malicious intent and make the necessary protestation.

Paso del Norte, August 15, 1823.

JOSE LERMA.

COUNCIL-ROOMS OF EL PASO, *August* 23, 1823.

This enlightened council, taking into consideration that the
346 foregoing petition is conformable to law, and that the petitioner, Don Jose Lerma, has been for some years in possession of the lands which he claims, the same enlightened council has deemed it proper that there be given by grant to Don Jose Lerma, a native of Presidio del Norte and residing in this town, the unimproved and wooded lands with the "sierras" for which he makes application, for stock-raising, cultivating the bends of the river, and all the other uses and benefits resulting from this grant.

Let all that has been done be brought to the knowledge of the most excellent deputation of Chihuahua in order that it may approve this grant if it be its superior pleasure.

The enlightened council of El Paso del Norte have thus resolve- in the council-rooms and signed hereto before me as the secretary, which I certify.

JOSE YGNACIO RASCON, *President.*
JOSE MORALES.
JOSE MA. VELARDE.
JOSE FRANCISCO CARBAJAL.
JOSE MANUEL GARCIA.
JUAN J. GIL.
LORENZO PROBENCIO.
JUAN MA. PONCE DE LEON, *Secretary.*

Approbation by the Most Excellent Deputation.

CHIHUAHUA, *October* 10, 1823.

Agreeably to the resolution of the enlightened council of the town of El Paso, this most excellent deputation have deemed it proper to approve the grant of all the lands, woods, and "sierras" applied for by the resident Don Jose Lerma, it being of advantage to the nation to open fields and to form settlements resulting in public utility, that enlightened council being ordered to appoint a commission that shall proceed to survey these lands and to give possession to the party interested, in the name of the supreme powers of the nation, of the lands, "sierras," woods, and pasturages applied for by him on the left side of the Rio Bravo del Norte.

JOSE IGNACIO URQUISE.

Paso del Norte, October 30, 1823.

347 *Decree of the Enlightend Council.*

Having received the foregoing application and approbation of the most excellent provincial deputation of Chihuahua to granting and putting the resident Don Jose Lerma in possession of the unimproved lands, woods, pasturages, and "sierras" for which he made application for the purpose of settling on the line of the Rio Bravo del Norte and on the left side from opposite the "Ojo del Toro" or be it the "Sierra de todos Santos" to the "Sierra Blanca," the enlightened council of this town, in compliance with the order of said most excellent deputation, resolved to appoint a commission of respectable and honorable persons who shall proceed to survey and delineate those lands and to put said Don Jose Lerma in possession thereof, this commission to be composed of Don Jose Ignacio Rascon, as president; Councilman (regidores) Don Jose Ma. Velarde, Don Jose Morales, Don Jose Manuel Garcia, Don Jose Francisco Carbajal, Don Juan Ja. Gil; Town Attorney (sidico del comun) Don Lorenzo Provincio, and the secretary, Don Juan Ma. Ponce de Leon, who shall proceed to fulfill their said commission on the 6th day of the next month of November, and upon having concluded the work they shall make report to this enlightened council for the necessary effects. Decreed, ordered, and signed by the president and other members before me, the secretary, which I certify.

JOSE IGN-IO RASCON, *Pres.*
JOSE MA. VALERDE.
LORENZO PROBENCIO.
JOSE MORALES.
JOSE MA. GARCIA.
JOSE FRANCISCO CARBAJAL.
JUAN J. GIL.
JUAN MA. PONCE DE LEON, *Secretary.*

At the place of "Al Ancon del Rio Bravo del Norte," on the left side, opposite the "Ojo del Toro" and the "Sierra de todos Santos," which lies on the right bank of the same river, on the tenth day of the month of November, eighteen hundred and thirty-three, the commission appointed for the demarcation of the bends of the unimproved lands, woods, pasturages, and "sierras" applied for by Don Jose Lerma for cultivating and stock-raising, where he
348 has already built some timber houses or huts (jacales), woth some crops of maize, wheat, and other vegetables, which he has harvested, the said commission, in discharge of its respective trust—which commission is composed of Don Jose Ignacio Rascon, president; the town attorney, Don Lorenzo Provencio; Councilmen Don Jose Ma. Velarde, Don Jose Morales, Don Jose Manuel Garcia, Don Jose Franco. Carbajal, Don Juan J. Gil, and the secretary, Don Juan Ponce de Leon—in order to execute the terms of this procedure and to comply with the orders of the enlightened council of the town of El Paso, and with the approbation of the most excellent provincial deputation of Chihuahua granting to Don Jose Lerma the said lands applied for by him, we began the survey according to law, and, standing on the ground, in presence of Senor Lerma, taking for initial or primordial point a cottonwood (alamo) on the left bank of the Rio Bravo, marking it with a cross, X, opposite the "Ojo del Toro" and the "Sierra de todos Santos," which are on the right bank, thirty-five thousand varas were measured, which terminate on the highest peak or summit of the "Sierra Blanco," having spent three days' work on this measurement, owing to the roughness of the ground, the commission deposing that the party interested shall erect there a landmark, and, passing the night at this place, with the remark that this measurement runs eastward, in the opinion of the commission, as it was not accompanied by a practical mathematician who could observe the courses with accuracy—

At about six o'clock in the morning of the fifteenth day of November, present year, the undersigned commission continued on its work with the appointed measures, who are Don Jose Man'l Garcia and Don Jose Francisco Garbajal, who promised to proceed with full legality in the measurements which are to be made and have been made from the "Sierra Blanco" to the "Sierra del Aguila," on the eastern side; fifty-five thousand varas were measured to
349 where the party interested was likewise instructed to erect another landmark. At this place the commission rested and slept subsequently to continue on their work; and from the "Sierra del Aguila" to some hot springs (ojos calientos) existing on the left bank of the Rio Bravo del Norte twenty-two thousany varas were measured on the southern boundary, said hot springs remaining within the property of the cla-mant, Don Jose Lerma, who was instructed to erect another landmark on the bank or said river, which said left bank shall be his last perpetual boundary, closing where the first measurement was commenced; and in this form the said survey was concluded, and Don Jose Lerma, who is

the party interested, being present the said commission asked him whether he was satisfied with the survey made, to its conclusion of those lands, woods, pasturages, and "sierras" applied for by him, granted to him, and of which, according to the law on the subject, possession is given to him, without prejudice of a third party claiming a better right, and he having answered affirmatively, having been present at the said measurements and the formality with which everything was done, Senor Rascom, president, with the said commission, in the name of the supreme powers of the nation, granted unto the said Don Jose Lerma and put him in possession of the lands above mentioned, with all their productions, as his lawful property, having taken him by the hand, caused him to walk over the tract of land, to throw stones, and to perform other acts of true possession, the said commission advising him in the name of the nation from whom he has received this bounty to exert himself for the prompt cultivation and possible settlement, so as to aggrandize her to the magnitude to which her liberality entitled her; and report having been made to the enlightened council of this town of the work of said commission on the 30th of November of said year, their work being concluded, the said enlightened corporation has re-
350 solved to approve it in all its parts, ordering that these proceedings be protocoled in the registers of the archives kept in the council-rooms, and that copies applied for by the party interested be delivered to him for his protection and that of his heirs and assigns, the present commission signing these acts before me, the secretary, which I certify.

JOSE IGNACIO RASCON.
JOSE MA. VALARDE.
LORENZO PROBENCIO.
JOSE MORALES.
JOSE MANUAL GARCIO.
JOSE FRANCISCO CARBAJAL.
JUAL J. GIL.
JUAN MA. PONCE DE LEON, *Secretary.*

Paso del Norte, December 12, 1823.

The land grant applied for by the resident Don Jose Lerma being approved by the enlightened council and by the most excellent provincial deputation of the city of Chihuahua, as is evidenced by the foregoing proce-dings carried on by the president of the appointed commission, who is also the president of this corporation, let this record be referred to its secretary for taxation of the *per diem* and writing therein, according to the tariff in force in this council, in order that the party interested may be informed of the fees he must pay; whereupon the originals shall be archived for the perpetual evidence, a certified copy being delivered to the party interested, as has been ordered, for his protection; and by these presents, the president and members comprising the enlightened corporation

have thus decreed and signed hereto before me, the secretary, which I certify.

JOSE IGNACIO RASCON.
JOSE MORALES.
JOSE MA. VELARDE.
LORENZO FRANCISCO CARBAJAL.
JUAN MA. VARELA.
JOSE MA. GARCIA
JOSE ALVARES.
JUAN MA. PONCE DE LEON, *Secretary.*

This is a copy of its original, from which it was this day transcribed, at the request of Senor Don Felix Lerma, on these seven leaves of common paper in default of the proper stamped paper, the party remaining obligated to replace it when it shall exist in the respective office; certified by me, citizen Pilar del Laso, 2nd alcade of this town of El Paso del Norte, signing with assist-
351 ing witnesses in default of a notary public, which I certify.

Paso del Norte, December 20, 1852.

PILAR DEL LASO.

Assisting:
FRANCISCO BARRON.
Assisting:
JOSE BEANES.

Fees on this testimonio, writing, authentication, comparing without the paper, 16 dollars, paid, to which I swear.

STATE OF TEXAS, }
County of El Paso. }

Before me, F. P. Clark, clerk of th- county court of El Paso county, State of Texas, on this day personally appeared Francisco Barron, proven by oath of Victor Ochoa, (known to me) to be the person whose name is subscribed as a witness to the foregoing and annexed instrument of writing, and after being duly sworn by me stated that Pilar del Laso was the person who executed the said instrument of writing, and that he had signed the same as a wotness at the request of said Pilar del Laso.

Given under my hand and seal of office, at the city of El Paso, this 1st day of October, 1897.

F. P. CLARK,
[SEAL.] *Clerk Co. Ct., E. P. Co., Texas.*

THE STATE OF TEXAS, }
County of El Paso. }

I, F. P. Clark, clerk of the county court of El Paso county, Texas, do hereby certify that the foregoing is a true and correct copy of the original document or certified copy of grant now on file in said court in Book 12, on pages 550, 551, 552, 553, 554, 555, and 556.

Given under my hand and seal of said court, at office, in El Paso, this 5th day of November, A. D. 1887.

[SEAL.] F. P. CLARK, *Clerk.*

352 STATE OF TEXAS, GENERAL LAND OFFICE,
AUSTIN, *September* 22, 1888.

— certify that ther foregoing first six pages and the first twenty-three lines of the seventh page contain a correct translation of a document in the Spanish language filed in this office on the 28th day of November, 1887, and existing in "file 2693, Bexar, 1st class," of the archives of this office; and I do further certify that the certificates of the county clerk of El Paso county appearing at the foot of said translation are true copies of the certificates attached to said Spanish documents.

X. B. DEBRAY,
Spanish Clk & Translator.

I, R. M. Hall, commissioner of the general land office of the State of Texas, do hereby certify that X. B. Debray, whose signature is subscribed to the foregoing certificate, is the Spanish clerk and translator of this office, duly qualified according to law, and that hi- official acts as such are entitled to full faith and credit.

In testimony whereof I have hereto set my hand and caused the seal of this office to be affixed on the day and date above written.

[SEAL.] R. M. HALL.

Endorsed: No. 4751. Enlightened council of El Paso del Norte, by President Jose Igno. Rascon. Original grant to Jose Lerma. Filed for record the 18th day of March, 1891, at 5 o'clock p. m. B. G. Thomas, clerk C. C., E. P. Co., by M. J. Clark, deputy. Filed this 2nd day of October, A. D. 1888. W. E. Turner, clerk, by C. A. Richardson, deputy. Emmett Pashal, Austin. Fees, $18.50. Oct. 30, 1823. Filed for record March 18th, 1891, at 3 o'clock p. m. Recorded Apri*n* 10th, 1891, at 3 o'clock p. m. B. G. Thomas, county clerk.

353 1852.

Ratification of Real Estate.

2ND JODGE, CITIZEN PILAR DEL LAZO.

To His Excellency Señor Don Jose Antonio Arce, lieutenant colonel, retired from the active army, and constitutional governor of the State of Chihuahua:

Citizen Jose Lerma, a lieutenant retired from the active army, would appear before Your Excellency in due form of law and represent that, in consequence of a decree of the most excellent provincial deputation of Chihuahua, issued on the tenth day of the month of October, year eighteen hundred and twenty-three, the coun-*li* of the town of El Paso granted and delivered to him fifty leagues of land on the left side of the Rio Bravo del Norte, about twenty leagues

distant from the town of "Nuestra Senor de Guadalupe del Paso," down the river, and containing the whole land from opposite the "Sierra de todos Santos," which is on the right side of said Rio Bravo, to the sierra called Blanca; thence to the other sierra called "Del Aguila," and thence to some hot springs on the left side of said river, with the bank thereof for his last boundary on the west. By virtue of this petition I have the honor to send to Your Excellency the proceeding carried on for the ratification. I would also state that it appears that the last counsil elected in the
354 town of El Paso refused to acknowledge the decree of the most excellent provincial deputation and that of the town council in eighteen hundred and twenty-three, and has sent to Your Excellency the titles for three grants of one league each for your approbation; which three grants are within the boundaries of said fifty-league tract which was granted to the undersigned.

In these terms he appeals to Your Excellency, praying that he be recognized in his rights of ownership of the lands which belong to him, confirming him in his said property which was granted to him in order that a settlement be formed in said lands, and that the council of the town of El Paso be notified accordingly. I pray for justice and make the necessary protestation at Paso del Norte May 12, 1828.

JOSE LERMA.

To the president of the council of the town of El Paso del Norte:

The decree or title of possession ordered to be given by the provincial deputation and the council of El Paso del Norte in the year 1823, whereby fifty leagues of land on the left side of the Rio Bravo were granted to Don Jose Lerma, has been ratified and confirmed by the second constitutional congress of this State in consideration of distinguished military services rendered to the Republic by the retired lieutenant, Jose Lerma.

355 Therefore this government considers that the land transferred by the granted bounty as an exclusive property of the said Lerma, ratifying it in all its parts. The council of El Paso del Norte will act accordingly. God and liberty.

Chihauhau, June 30, 1828.

JOSE ANTONIO AREC.
JOSE PASCUAL GARCIA, *Secretary.*

This is a copy of the originals, certified by me, citizen Pilar del Laso, second alcalde and judge of primary jurisdiction of this town, signing with assisting witnesses in default of a notary public, which I certify.

Paso del Norte, December 20, 1852.

PILAR DEL LASO.

Assisting:
FRANCISCO BARRON.
Assisting:
JOSE BEAUES.

Fees on this testimonio without stamped paper, there being none, five dollars; paid.

356 THE STATE OF TEXAS, }
County of El Paso. }

Before me, F. P. Clark, clerk of the county court in and for El Paso county, Texas, on this day, personally appeared Francisco Barron, known to me to be the person whose name is subscribed as a witness to the foregoing and annexed instrument of writing, and, after being duly sworn by me, state- that Pilar del Laso, the person who executed the said instrument of writing, acknowledged in his presence that he had executed the same for the purpose and consideration therein expressed, and that he and Jose Beaues had signed the same as witnesses at the request of the said Pilar del Laso.

Given under my hand and seal of office at El Paso, Texas, this twenty-fifth day of January, 1888.

[SEAL.]

F. P. CLARK,
Clk Co. C. El Paso Co.

(Filed Jan'y 25th, 1888, at 3.30 p. m.)
(Recorded " 26th, " " 2 p. m.)

357 *Certificate of True Copy.*

THE STATE OF TEXAS, }
County of El Paso. }

I, F. P. Clark, clerk of the county court of El Paso county, Texas, do hereby certify that the foregoing is a true and correct copy of the original instrument now on file in said court, in Book 14, on pages 48, 49, and 50.

Given under my hand and the seal of said court, at office, in El Paso, Texas, this 2nd day of March, A. D. 1888.

[L. S.]

F. P. CLARK, *Clerk.*

STATE OF TEXAS, GENERAL LAND OFFICE,
AUSTIN, *September* 22, 1888.

I certify that the foregoing first two pages contain a correct translation of a document in the Spanish language filed in this office on the 13th of March, 1888, and existing in " file 2693, Bexar, 1st class " of the archives of this office; and I do further certify that the certificates of the county clerk of El Paso county ap-earing on the third page hereof are true copies of the certificates attached to said Spanish document.

X. B. DEBRAY,
Spanish Clerk & Translator.

358 I, R. M. Hall, commissioner of — general land office of the State of Texas, do hereby certify that X. B. Debray, whose signature is subscribed to the foregoing certificate, is the Spanish clerk and translator of this office, duly qualified according to law, and that his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereto set my hand and caused the seal of this office to be affixed on the day and date above written.

[SEAL.]

R. M. HALL,
Commissioner.

Endorsed: No. 47. 51. State of Chihuahua, by Governor Jose Antonio C—. Ratification of real estate to Jose Lerma. Filed for record the 18th day of March, 1891, at 3 o'clock p. m. B. G. Thomas, clerk C. C. E. P. Co., by M. J. Clark, deputy. Filed this 2nd day of October, A. D. 1888. W. E. Turner, clerk, by C. A. Richardson, deputy. (Filed for record 18th day of March, 1891, @ 3 p. m.) (Recorded 28 day of April, 1891, @ 1.30 p. m.) B. G. Thomas, clerk.

359 Be it further remembered that afterwards, to wit, on the twenty-sixth day of June, A. D. 1895, the same being the thirty-seventh day of the May term, A. D. 1895, the following further proceedings were had in the said cause, to wit:

Decree.

360 In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

J. B. CESSNA, KATE CESSNA, His Wife; JOHN R. KEEDLE, Mary E. Keedle, His Wife; Esther G. Hunter; Eliza J. Bibb, Malon A. Bibb, Her Husband; Robert W. Sherman, Amelia C. Sherman, His Wife; Alice Wood; Alice M. Scott, Widow; James Scott, Guardian of I. Ethel Scott, Lucretia Scott, and Mabel Scott, Minor Children of Charles W. Scott, and Francis J. Heath, Widow of Robert J. Heath, Deceased; Grantees, Heirs, and Legal Representatives of John G. Heath, Deceased, Plaintiffs. } No. 59.

versus

THE UNITED STATES OF AMERICA and the Unknown Owners of The Dona Ana Bend Colony, Mesilla Colony, and Bracito Grants, Defendants.

John G. Heath or Juan Gid Grant.

Decree.

This cause having been tried and having been argued by counsel for all of said parties and submitted to and taken under advisement by the court at a former day of the present term, the court being now sufficiently advised in the premises, doth find that the said petition for the confirmation of the private land claim, commonly known as the "Juan Gid or John G. Heath" grant, situate in the county of Donna Ana, Territory of New Mexico, has not been sustained by satisfactory proof, and that the said title so asserted to the tract of land claimed to have been granted by the ayuntamiento of El Paso on the 3rd and 7th days of April, 1823, under the
361 law known as the colonization law of Iturbide of January 4th, 1823, to John G. Heath, under the name of Juan Gid, is of no validity, and that said grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States:

It is therefore ordered, adjudged, and decreed that the claim to

the tract of land known as the "Juan Gid or John G. Heath" grant, situate in the county of Donna Ana and Territory of New Mexico, and being for a tract of land five leagues square, having for its central point the head of the Bracito acequia, under a grant alleged to have been made on April 3rd and April 7th, 1823, by the ayuntamiento of El Paso, under the law commonly known as the colonization law of Iturbide of January 4th, 1823, to John G. Heath, under the name of Juan Gid, is hereby rejected, and said petition is dismissed.

(Sig.) WILBUR F. STONE,
Associate Justice.

362 Be it further remembered that afterwards, to wit, on the nineteenth day of October, A. D. 1895, being the twelfth day of the October term, A. D. 1895, the following further proceedings were had in said court, to wit:

J. B. CESSNA *et al.*
vs.
THE UNITED STATES.

Come now the plaintiffs in the above-entitled cause and pray an appeal from the judgment heretofore entered in the cause to the supreme court; which appeal is allowed this 19th day of October, 1895.

363 And be it further remembered that afterwards, to wit, on the twenty-fourth of October, A. D. 1895, an opinion in this cause was filed in the office of said clerk; which said opinion is in the words and figures following, to wit:

364 In the Court of Private Land Claims, District of New Mexico.

J. B. CESSNA *et al.*
vs.
THE UNITED STATES *et al.* } No. 59.

Action for the confirmation of an alleged grant of lands in the Territory of New Mexico.

Mr. J. B. Cessna and Mr. T. B. Catron, for petitioners.

Mr. Matt. G. Reynolds, U. S. attorney; Mr. S. Burkhart, asst. U. S. attorney; Mr. Frank Springer, Mr. E. A. Fiske, Mr. S. B. Newcomb, Mr. H. L. Waldo, Mr. J. W. Vroom, for defendants.

Opinion of the Court.

REED, *C. J.:*

Plaintiffs seek the confirmation of a grant of land alleged to have been made on the 4th of April, 1823, by the ayuntiamento (town council) of El Paso to John G. Heath, under whom they claim—some by descent and others by purchase. The documentary evidence introduced shows that Heath presented his petition to the ayuntamiento, in which he stated his purpose to introduce into the

country thirty families of Catholic Christians, and asked that the lands in question be given him on which to settle the same. Favorable action was taken on his petition by the ayuntamiento and a committee was appointed to put him in juridicial possession of the property, which was accordingly done. We deem it unnecessary to set out the proceedings more fully, for the reason that our
365 disposition of the case is upon grounds in no manner affected by the mere form of the proceedings.

The parol evidence introduced shows that Heath after he had been given possession of the property returned to the State of Missouri where his family then was and of which State he had for many years been a citizen and resident. He there induced a number of families to become associated with him in the enterprise, and in the following year, the party, consisting of about one hundred and fifty persons, left Missouri for Mexico, taking with them a large amount of personal property. Subsequently he and many of his associates returned to Missouri, stating as reason for their return that when they reached Mexico they were not permitted to occupy the lands which had been given them, but were compelled to leave the country.

In making the grant the ayuntamiento assumed to act under the authority of a decree dated January 4th, 1823, promulgated by the emperor, Iturbide. The only portions of that decree which it material to consider are the 3rd and 4th sections, which are as follows:

SEC. 3. "The empressarios, by whom is understood those who introduced at least two hundred families, shall previously contract with the executive, and inform it what branch of industry they propose to follow, the property or resources they intend to introduce for that purpose, and any other particulars they may deem necessary in order that with this necessary information the executive may designate the province to which the must direct themselves: the lands which they can occupy with right of property and other circumstances which may be considered necessary.

SEC. 4. Families who emigrate not included in a contract shall immediately present themselves to the ayuntamiento of the place where they wish to settle in order that this body in conformity with the instructions of the executive may designate the land corresponding to them agreeably to the industry which they may establish."

There is controversy as to the correct translation of the fourth section. The translation set out above is that contended for by plaintiffs, and for the purposes of the case its correctness may be conceded. We think there are two grounds upon which the claim should be rejected:

366 First. It was families not included in a contract alone which the ayuntamiento was empowered by the fourth section of the decree to settle. The language of the section is explicit and the effect of the provision cannot be extended beyond the express words made use of. While Heath was not an empressario within the meaning of the third section, his petition and the action of the ayunta-

miento thereon clearly constituted a contract. His proposition was to introduce into the country a specified number of families, among whom should be persons of certain designated trades and professions, and as consideration for his undertaking in that regard the ayuntamiento undertook to give him the land. While the decree did not expressly reserve to the executive the power to contract for the introduction of parties of less than two hundred families, it clearly did not confer such power upon the ayuntamiento. Jurisdiction of the subject dwelt absolutely in the executive originally and unless conferred upon some subordinate continued there, and there is nothing in the decree from which the intent to confer it can be inferred; but if it be said that as the ayuntamiento had the power to make grants of land the one in question can be sustained as an exercise of that power independently of its character as a contract, we answer that, in our judgment, the grant was not made in the exercise of the powers actually conferred upon the ayuntamiento. The language of the fourth section is that "families who emigrate not included in a contract shall present themselves to the ayuntamiento of the place where they wish to settle in other that this body may designate the lands," &c.

El Paso, like other Spanish towns, is presumed to have had a grant of four square leagues of land, and the ayuntamiento had the power to make allotments of land within the four leagues so granted.

367 In our judgment, the power conferred upon the ayuntamiento by the decree with reference to foreign emigrants was simply to allot to them lands within the town grant after they had signified their desire to settle at that place; or if it should be said that the body had the power to make grants within the territory without the town grant over which it had jurisdiction, we answer that unless their power was enlarged by the decree they could make allotments only in the quantities prescribed by existing laws and regulations governing allotments within the town grant, and we find nothing in the language of the decree indicating an intention to confer such enlarged power. The lands attempted to be granted to Heath lie entirely without the four leagues belonging to El Paso and *is* much greater in extent than the grant to the town.

It seems to us incredible that the executive should have intended by the decree to confer upon subordinate officers living in remote provinces the power to dispose of the public domain to foreigners in unlimited amount upon such terms as they might choose, and yet that is what was done in this instance if the construction of the decree contended for by the petitioners should be sustained. In our opinion there is nothing in either the language of the document or the nature of the case which would warrant such construction.

Second. But if the power of the ayuntamiento to make a grant like the one in question upon the conditions named in the decree should be conceded there is another consideration which, in our opinion, is conclusive as against the petitioners. The power conferred upon the ayuntamiento was to grant lands to families who had emigranted and who presented themselves for settlement. Abso-

lutely no power was conferred to make grants to individuals who went into the country without families or in advance of them, and that was Heath's condition when the grant was attempted to be made. He had come alone into the country. Let it be conceded that the body had the power to designate the lands which should be given to him when he should return to the country bringing his family (ies) A with him; but until that condition should happen there was absolutely no power in the body to confer upon him any rights with reference to the land. If he had not returned to the country, bringing his family (ies) with him, no one
368 would contend, we think, that he had obtained a right or title to the property. All that was done in the matter then, on the occasion of his first visit to the country, amounted only to this: that the privilege was granted him of emigrating to the country with his family (ies) A and of settling upon the land, upon the happening of which conditions, if no change in the policy or purposes of the government should have occur-ed in the meantime, his property rights in the land would become perfect; but long before he returned to the country with his family—indeed, before he left it for the purpose of taking his family to it—the Emperor Iturbide was overthrown and the decree under which the privileges were extended to him had been revoked, and his own explanation of the failure of his expedition, made after his return to Missouri with his family, was that owing to the change in the form of government and the revocation of the decree the authorities of the country denied his right to the land and refused him permission either to occupy it or to remain in the country. That these events amounted to a revocation of the privileges granted him there is not the slightest doubt, and that it was within the power of the government to revoke it is equally clear. The settlement of foreigners in any country is a matter affecting the public policy of the nation and the government has absolute control over it, and a privilege of emigrating to and acquiring property in the country may be revoked at any time, however disastrous such revocation may be to those who suffer from it.

We think, therefore, that Heath did not acquire any interest in the property in question, and that the petition must be dismissed without remedy from this court.

369 And be it further remembered that afterwards, to wit, on the twenty-fourth day of October, A. D. 1895, a stipulation was filed in said cause in the office of said clerk; which said stipulation is in the words and figures following, to wit:

370 In the United States Court of Private Land Claims.

J. B. CESSNA *et al.*
vs.
UNITED STATES *et al.*

It is hereby agreed that the orders of the court with reference to the taking of the depositions in behalf of said plaintiffs, commissions, agreements of attorneys, and certificates of officers taking said depositions, as well as the Spanish interrogatories and answers, may be omitted from the record, the English interrogatories and answers or translations being given in each deposition of the following witnesses:

Depositions of—

Enrique Palmer, taken before notary public.
Balnida N. Jones, " " " "
Eliza J. Bibb, Francis J. Heath, John Bert, and Ester C. Hunter, taken before Thomas J. Powell, notary public.
Mary R. Keedle, taken before Charles H. Tanner, U. S. commissioner.
John B. Keedle, " " W. F. Button, notary public.
Maj. Horatio H. Hughes, taken before notary public.
Charles E. Woodruff, taken before R. M. Reynolds, notary public.
James Bryan, taken before John T. Birdrege, notary public.
Madalena de Carranco, taken before M. Cameron, U. S. consular agent.
Gregorio Herrera, taken before Teodoro Austin, U. S. consul.
Price Cooper, " " " " " "
Major T. T. Teel, taken before John C. Pearce, notary public.

In order to avoid duplicate or triple papers, it is hereby agreed that the copy of the grant in Spanish, Ex. L, and English copy, Ex. K, filed by plaintiffs when said suit was brought, as well as copy offered in trial, shall be omitted from this record, the same being supplied by a copy of the grant to Juan Gid or Doctor John G. Heath, April, 1823, in surveyor general's office of New
371 Mexico, being No. 410 of the old Spanish and Mexican archives and claim 505, Mexican and Spanish land grants, in the land office at Santa Fé, New Mexico, offered by defendants.

It is further agreed that Ex. Z, certified act of Congress, September 5th, 1859, relative to the claim of Hugh Stevens and Juan Garcia, may be omitted from the transcript.

It is agreed that Ex. S, Spanish and partly English copy of petition of Juan Gid or Dr. John G. Heath to Mexican government, December 27th, 1822, certified by the Mexican authorities at city of Mexico, may be omitted from the record, the same being supplied by a correct translation, marked Ex. S.

That petitioners have leave to withdraw Ex. V, if so desired.

It is stipulated and agreed by said parties that the following exhibits, introduced by the defendants on the trial of said cause, may be omitted from the record on appeal in said cause, to wit:

1. All of the files of the office of the surveyor general of New

Mexico in claim reported No. 6, known as the Hugh Stevenson grant, except the report of said surveyor general and the certificate of Juan Maria Ponce de Leon, political chief of the Bravos district, Ex. A[1] herewith.

2. All of the Spanish of the Doña Ana Bend Colony Grant papers, reported No. 85.

3. All of the Spanish of the Mesilla Civil Colony Grant papers, reported No. 186.

4. All of the files of the office of the surveyor general of New Mexico in claim reported No. 139, known as the Santo Tomas de Yturbide grant.

372 5. All of the files in the surveyor's general's office in claim reported No. 129, known as the Jose Manuel Sanchez Baca grant.

6. The official plats made under the direction of the surveyor general of New Mexico of the foregoing five grants and the filed notes of the surveys on which said plats are based.

7. The Spanish archive No. 1107, a translation of which was introduced by the United States as Defendants' Exhibit No. 5.

8. The official plats of townships 23, 24, and 25 south, in ranges 1, 2, and 3 east.

9. The original grant in Spanish of the Doña Ana Bend Colony grant.

10. The abstract of land entries made under public land laws, Defendants' Exhibit 11.

It is admitted by said parties that the Santo Tomas de Yturbide grant, reported No. 139, and the Jose Manuel Sanchez Baca grant, reported No. 129, were made by the same authorities and under the same laws as that to the Mesilla Civil Colony grant, which is included in the record.

It is admitted by said petitioners that the five private land claims referred to in this stipulation all conflict with the lands claimed by petitioners herein, and that the public surveys have been extended over all of said lands so claimed by said petitioners except that covered by the surveys of said private land claims, and it is further admitted by said petitioners that 71 entries under the public land laws of the United States have been made within the limits of the land here claimed by them.

It is agreed that the demurrer of the United States, Numa Raymond, *et al.* be inserted in the record, and that the demurrer of the Rio Grande Land Co., being similar thereto, shall be omitted from the transcript.

It is agreed that the summons issued and answered upon defendants, as per order of court, as well as the notice in Spanish and English to all parties in interest to appear within thirty days, dated March 27, 1893, and proof of publication thereof, shall be omitted from the transcript.

(Sig.) S. BURKHART,
Ass't U. S. Att'y.
J. B. CESSNA,
Att'y for Appellees.

373 Ex. A[1].

Citizen Juan Maria Ponce de Leon, political chief of the Bravos district:

I certify as far as the law allows that D. Juan N. Garcia, deceased, the father of the petitioner, asked for the possession of the land called El Bracito; that he lived there for many years, cultivating the land and raising stock of all descriptions; that almost at his own expense he entirely kept the Apaches at peace and rendered other very useful services to travellers and even to the entire nation until the savages by their insurrections and hostilities forced him to withdraw from said place. The land itself proves that it has been cultivated, as it is crossed by ditches (acequias). Some of the land is ridged and the ruins of the house still exist. I also know, not remembering the year, that an individual of the United States named Juan Gid asked for and received a grant of land at the same place from the Mexican authorities, respecting those of Don Juan A. Garcia. This he affirms, having been one of the commissioners in the measurement of the land asked for; and at the request of the party interested and for the purpose which he may deem necessary I give him these presents, which I sign at El Paso on the seventeenth day of March, one thousand eight hundred and forty-nine.

JUAN M. PONCE DE LEON.
FAUSTINO MONTES, *Secretary.*

374 And be it further remembered that afterwards, to wit, on the twenty-fourth day of October, A. D. 1895, a citation was filed in the said cause in the office of said clerk; which said citation is in the words and figures following:

375 *Citation on Appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Matt. G. Reynolds and Summer Burkhart, United States att'ys; Frank Springer, James W. Vroom, J. B. Newcomb, and Eugene A. Fiske, att'ys for other defendants, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit, within *on the* sixty days from Oct. 19, 1895, pursuant to an appeal filed in the office of the clerk of the court of private land claims, wherein J. H. Cessna; Kate Cessna, his wife; John R. Keedle; Mary E. Keedle, his wife; Esther G. Hunter, Eliza J. Bibb; Malon A. Bibb, her husband; Robert W. Sherman; Amelia C. Sherman, his wife; Alice Wood; Alice M. Scott, widow; James Scott, guardian of I. Ethel Scott, Lucretia Scott, and Mabel Scott, minor children of Charles W. Scott, and Francis J. Heath, widow of Robert J. Heath, deceased, grantees, heirs, and legal representatives of John G. Heath, deceased, plaintiffs, are appellants, and The United States of America and the Unknown Owners of the Dona Ana

Bend Colony, Mesilla Colony, and Bracito Grants, defendants, are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19 day of Oct., in the year of our Lord one thousand eight hundred and ninety —.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

On this 24 day of Oct., 1895, personally appeared before me, the subscriber, J. B. Cessna, and makes oath that he delivered a true copy of the above citation to Hon. Matt. G. Reynolds by mailing the same to his present address, Washington, D. C.

J. B. CESSNA.

376 Subscribed and sworn to before me this 24th day of Oct., 1895.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

We hereby acknowledge service of the foregoing citation for and on behalf of the appellants this 24 day of Oct., 1895.

JAMES W. VROOM,
EUGENE A. FISKE,
FRANK SPRINGER,
S. B. NEWCOMB,
By F. S.,
Attorneys for Appellants.

I hereby acknowledge service of a copy of the within citation.

S. BURKHART,
Special Ass't to Att'y Gen'l for Court of Private Land Claims.

377 *No. 59. John G. Heath or Juan Gid Grant.*

In the United States Court of Private Land Claims.

J. B. CESSNA, KATE B. CES-NA, His Wife; JOHN B. KEEDLE, MARY R. Keedle, His Wife; Esther C. Hunter, Eliza J. Bibb, Malon A. Bibb, Her Husband; Robert W. Sherman, Amelia C. Sherman, His Wife; Alice Wood, Alice M. Scott, Widow of James Scott, Guardian of L. Ethel Scott, Lucretia Scott, and Mabel Scott, Minor Children of Charles W. Scott, and Francis J. Heath, Widow of Robert J. Heath, Deceased, Grantees, Heirs, and Legal Representatives of John G. Heath, Deceased, Plaintiffs,

versus

THE UNITED STATES OF AMERICA and THE UNKNOWN HEIRS OF the Doña Ana Bend Colony, Mesilla Colony, and Bracito Grants.

Plaintiffs' Assignment of Errors on Appeal.

1st. The court of private land claims erred in finding and decreeing in said cause that the said petition for the confirmation of the private land claim commonly known as the "Juan Gid or John G. Heath" grant has not been sustained by satisfactory proof, and that this said title so asserted to the tract of land claimed to have been granted by the ayuntamiento of El Paso on the 3rd and 7th day of April, 1823, under the law known as the colonization law of Iturbide of January 4th, 1823, to John G. Heath under the name of Juan Gid is of no validity, and that the said grant or concession so claimed is not such an one as the United States are bound to
378 recognize and confirm by virtue of the treaty of cession of Mexico to the United States.

2.

The court further erred in ordering, adjudging, and decreeing that this claim to the tract of land known as the "Juan Gid or John G. Heath" grant, situated in the county of Donna Ana and Territory of New Mexico, and being for a tract of land five leagues square, having for its central point the head of the Bracito acequia, under a grant alleged to have been made on April 3rd and April 7th, 1823, by the ayuntamiento of El Paso, under the law commonly known as the colonization law of Iturbide of January 4th, 1823, to John G. Heath under the name of "Juan Gid," is hereby rejected, and said petition is dismissed.

We therefore pray this honorable court to reverse said decree.

(Sig.) T. B. CATRON,
(Sig.) J. B. CESSNA,
Att'ys for Appellants.

379 J. B. CESSNA *et al.* }
vs.
THE UNITED STATES. }

I, J. H. Reeder, clerk of the United States court of private land claims, by J. L. Chaves, deputy, *to* hereby certify that the foregoing three hundred seventy-eight (378) pages — a true, full, and complete transcript of all the pleadings, record proceedings, and files in my office, as also all the evidence and proof had, received, and heard in the cause, filed and tried in the court of private land claims of the United States, except that part thereof which was eliminated by stipulation of attorneys for appellants and appellees, filed and made a part of this transcript, in which case J. B. Cessna *et al.* are the appellants or plaintiffs and The United States *et al.* are the appellees or defendants, said cause being for the confirmation of a certain private land claim or grant commonly known and designated as the "Juan Gid or John G. Heath" grant.

In witness whereof I have hereunto set my hand and affixed the seal of said court of private land claims of the United States, at Santa Fé, New Mexico, this — day of October, 1895.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

Endorsed on cover: Case No. 16,079. Court of private land claims. Term No, 78. J. B. Cessna, Kate Cessna, his wife; John R. Keedle, *et al.*, appellants, *vs* The United States *et al.* Filed November 1st, 1895.